



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



In the matter of:)
)
) ISCR Case No. 21-01413
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*
06/07/2022

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant’s handling of his taxes resulted in unmitigated Guideline F (financial considerations) security concerns. Eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on September 9, 2020. (Item 4) On September 22, 2021, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). (Item 1) Applicant answered the SOR on October 15, 2021, and requested a decision based upon the administrative record (Answer). (Item 3)

A copy of the file of relevant material (FORM), dated January 3, 2022, was provided to Applicant by letter on the same date. Department Counsel attached as evidence to the FORM Items 1 through 6. Applicant was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. On February 7, 2022, he responded to the FORM and provided three documents. On March 18, 2022, the case was assigned to me. I marked the documents provided by Applicant as Applicant Exhibits A through C. Department Counsel did not object to these documents, nor did Applicant object to any of the Government’s documentation in his response to the FORM. Both parties’ documentation is admitted into evidence.

Findings of Fact

Applicant is 57 years old. He has been married since 1985, and has an almost 39-year-old stepson and a 33-year-old son. He received a high school diploma in 1983. He served on active duty in the U.S. Army from 1983 until he honorably retired in October 2008 as a sergeant first class. He has primarily worked for Defense contractors since he retired from the military, and he has worked for his current employer, as a survival, evasion, resistance, and escape instructor, since August 2020. He held a security clearance while in the Army and was granted a top secret clearance in approximately 2021. (Item 4; Item 6)

The SOR alleged that Applicant failed to file his federal and state income tax returns for tax years (TY) 2013 through 2019, and they remain unfiled. Additionally, he owes the federal government \$133,196 for TY 2013 through 2019, and he owes his state \$32,238 for TY 2013 through 2019. In his Answer to the SOR, he admitted that he made a mistake, and indicated that he has “been in the process of correcting that mistake since June of 2020.” He admitted all four SOR allegations and provided documentation, which is discussed in depth below. (Item 1; Item 3; Item 5; Item 6)

After Applicant retired from the Army in October 2008, he was unemployed from October 2008 to January 2009. Since regaining employment in January 2009, he has worked for various Defense contractors. He worked overseas from April 2011 until August 2020, when he returned to the United States due a reduction in force from the COVID-19 pandemic. While he was working overseas, he and his wife did not file federal or state income tax returns.

We were under the impression since we were Expats living and working overseas, we had up to seven years before we had to submit our income tax. We also had a family member who received a diagnose (sic) of cancer which became terminal. Because of our misunderstanding of the tax codes and family issues, we did not focus on filing our taxes. We have retained the serves (sic) of [TaxService] to represent us before the IRS. They have made contact with the IRS on our behalf. Because we contacted the IRS first, they are working with us so we can get back in good standing with them. None of our assets have been or will be frozen or seized. Mr. [C] from [TaxService] is our Power of Attorney within the IRS Records. (Item 4 at 51-54)

Applicant completed a SCA in September 2020, and he was asked to disclose his tax history dating back seven years. He admitted the information above regarding TY 2013 through 2019. Although he was living overseas, for at least part of TY 2011 and all of TY 2012, it is unknown from the record evidence if he failed to file his tax returns for TY 2011 and 2012 in a timely manner, and these TYs are not alleged. Additionally, it appears from the documentation that he did not file TY 2020 in a timely manner, and he owes the IRS for this TY as well, however, this TY is not alleged. None of the unalleged TY will not be considered as disqualifying. (Item 4; Item 5; Item 6)

In November 2020, a few months after Applicant returned to the United States, he was interviewed by a Government investigator. He confirmed the information he provided in his 2020 SCA regarding his 2013 through 2019 federal and state tax returns was accurate. Additionally, he acknowledged that he was embarrassed that he allowed his tax issue to happen; he should have known better; and he should have checked or confirmed his belief that he was exempt from filing tax returns because he was living and working overseas. He also disclosed that his personal matters during this time period (his son was diagnosed with brain cancer; he and his wife had three family members pass away; and his wife had to return every three months to the United States for prescription medications) overwhelmed him, which also led him to forget to deal with his tax issues as well. (Item 5; Item 6)

After Applicant and his wife returned to the United States, he hired a company (Tax Service) to represent them with the Internal Revenue Service (IRS). During his November 2020 interview, he told the investigator that he had filed all of his income tax returns two weeks earlier. At that time, he did not know what he owed, as he was waiting for Tax Service to work with the IRS to determine what he and his wife owed. He told the investigator that he was not purposefully not paying his taxes, he was just confused and overwhelmed by the process. In his March 2021 interrogatories, he further clarified that he and his wife lost four siblings and his wife had a nervous breakdown, attempted suicide, was hospitalized, and was diagnosed with major depression disorder, all of which contributed to his inability to file his tax returns. (Item 5; Item 6)

Below is a chart of Applicant's federal and state taxes:

	IRS-Answer	Status	Source	State-Answer	Status	Source
2013	Applicant claims IRS forgave this TY	No Tax Return Received by IRS; IRS sent Applicant an inquiry on 10/30/2014 for non-filing of 2013 tax return & issued a notice on 11/17/2014	Item 3 at 1; Item 4 at 50-51; Item 5 at 8-9; Item 6 at 15	Applicant claims State forgave this TY	No documents from Applicant	Item 4 at 50-51; Item 6 at 15
2014	Applicant admits he owes \$25,139	No Return Received by IRS as of 2/22/21; Applicant submitted a return signed on 10/5/20; IRS sent Applicant an inquiry on 10/28/2015 for non-filing of his 2014 tax return and issued him a notice on 11/16/2015	Item 3 at 2-3; Item 4 at 51; Item 5 at 10-11	Applicant admits he owes State \$5,824	Filed 2/9/2021, <u>Owes: \$9,528.16</u>	Item 3 at 18-20; Item 4 at 51; Item 6 at 15 17

	IRS-Answer	Status	Source	State-Answer	Status	Source
2015	Applicant admits he owes \$24,388	Applicant submitted a return signed on 2/22/2021	Item 3 at 4-8; Item 4 at 51-52; Item 5 at 12	Applicant admits he owes State \$5,718	Filed 2/9/2021, <u>Owes: \$9,074.24</u>	Item 3 at 21-23; Item 4 at 51-52; Item 6 at 15, 18
2016	Applicant admits he owes \$24,109	No Return Received by IRS as of 2/22/21; Applicant submitted a return signed on 10/5/20; IRS sent him an inquiry on 6/21/2018 for non-filing of 2016 tax return and issued him a notice on 7/6/2018	Item 3 at 9-10; Item 4 at 52; Item 5 at 13-14	Applicant admits he owes State \$5,600	Filed 2/9/2021, <u>Owes: \$8,615.06</u>	Item 3 at 24-26; Item 4 at 52; Item 6 at 15, 19
2017	Applicant admits he owes \$23,129	No Return Received by IRS as of 2/22/2021; Applicant submitted a return signed on 10/5/20; IRS sent Applicant an inquiry on 11/1/2018 for non-filing of his 2017 tax return and issued him a notice on 11/19/2018	Item 3 at 11-12; Item 4 at 52-53; Item 5 at 15-16	Applicant admits he owes State \$5,254	Filed 2/9/2021, <u>Owes: \$7,828.56</u>	Item 3 at 27-29; Item 4 at 52-53; Item 6 at 15, 20
2018	Applicant admits he owes \$18,567	No Return Received by IRS as of 2/22/2021; No return signature page provided by Applicant; IRS sent an inquiry on 11/13/2019 for non-filing of 2018 tax return and issued him a notice on 12/2/2019	Item 3 at 13-14; Item 4 at 53; Item 5 at 17-18	Applicant admits he owes State \$51,64	Filed 2/9/2021, <u>Owes: \$7,425.65</u>	Item 3 at 30-32; Item 4 at 53; Item 6 at 15, 21
2019	Applicant admits he owes \$19,864	<u>Balance: \$22,2564.69;</u> Applicant signed Return 10/5/20	Item 3 at 15-17; Item 4 at 53-54; Item 5 at 19; Item 6 at 9-10	Applicant admits he owes State \$4,678	Filed 2/9/2021, <u>Owes: \$6,436.90</u>	Item 3 at 33-35; Item 4 at 53-54; Item 6 at 15, 22

Applicant indicated in his March 2021 interrogatories that he contacted his State Department of Revenue (SDOR), but did provide a date for when he initiated contact. He also claimed that the SDOR does not provide tax account transcripts. However, in his August 2021 response to interrogatories, he provided copies of SDOR notice of collection letters for TY 2014 to 2019. As noted in the chart, he owes significantly more money for each TY year than he claimed he owed. Additionally, he included documentation from the

IRS, which includes the actual amount that he owes the IRS for TY 2019, but he did not include documentation from the IRS for the remaining TYs in question. He provided no documentation indicating the IRS accepted his tax returns for the other alleged TYs. In his August 2021 response to interrogatories, he admitted that he owes the IRS \$133,196 and SDOR \$32,238, and at that time, he did not have an installment agreement with either entity. The IRS had processed no payments in the past five years from applicant. There is no documentation in the record from either the IRS or SDOR that either entity has forgiven TY 2013, and is not requiring Applicant to either file or pay taxes for this year. (Item 5 at 7; Item 6)

In Applicant's response to the FORM, he provided a February 2022 letter from Tax Service, the company that he retained in June 2020 to help him resolve his outstanding federal and state taxes. According to Tax Service, "We have gotten [Applicant] into compliance with [his] missing tax return filings 2014 – 2020 years. We are currently waiting the tax returns for 2015, 2016, 2017 & 2020 years to be assessed by the [IRS] after which we will set an agreement for 2014 – 2020 tax liabilities. We have set up a resolution with [SDOR] with monthly installment agreements." Applicant did not provide documentation from the IRS regarding TY 2014 and 2018 and its updated assessment. (AE B)

Applicant submitted a January 2022 authorization for bank draft payment agreement between himself and the SDOR starting on February 28, 2022. His checking account is going to be auto-drafted \$1,129.90 monthly for 60 months. In January 2022, his total outstanding debt to SDOR was \$67,793.83. The payments were to start after he submitted his response to the FORM; therefore, there is no proof of payments in the record. Nor did he provide a budget to demonstrate his ability to make these payments. (AE C)

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 concern under Guideline F (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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a

person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The record evidence of Applicant's delinquent taxes and failure to file his income tax returns in a timely manner establishes the following disqualifying conditions under AG ¶ 19:

- (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.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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 and his wife were under the mistaken belief that they were not required to file their federal and state income tax returns while they were living overseas. It is unclear from the record how or when they formed this belief. Additionally, they moved overseas in 2011, and it is unknown if they failed to file their federal and state tax returns for TY 2011 and 2012 in a timely manner, as Applicant's 2020 SCA only asked him to report the previous seven years. It appears from the documentation that he did not file TY

2020 in a timely manner and owes an unknown amount to the IRS for this TY, demonstrating that this behavior is recent. According to Applicant, his various personal issues related to his son's cancer, his wife's medical problems, and the death of their four siblings also contributed to their failure to file their federal and state income tax returns. However, he failed to demonstrate that he acted reasonably under these circumstances to address his tax issues.

During the summer of 2020, Applicant hired Tax Service to help him navigate his unfiled and unpaid federal and state income taxes. On October 5, 2020, he signed federal income tax returns for TY 2014, 2016, 2017, and 2019. He signed a return for TY 2015 on February 22, 2021. He did submit a signature page for TY 2018, and has admitted that he has not filed federal or state income tax returns for 2013. He filed his state income tax returns for TY 2014 through 2019 on February 9, 2021.

According to Tax Service, as of the date of Applicant's response to the FORM, the IRS had not assessed his returns for TY 2015, 2016, 2017, and 2020, and they failed to provide an updated balance for the years that have been assessed, TY 2013, 2014, 2018 and 2019. According to the IRS document submitted by Applicant in his August 2021 response to interrogatories, his outstanding balance for TY 2019 was \$22,265.69, rather than the \$17,864, he claimed he owed. According to Applicant he owes the IRS \$133,196, but he has failed to provide documentation from the IRS to substantiate this amount. The updated TY 2019 documentation, indicates that this total amount could be significantly greater. At this time, he does not have payment agreement in place with the IRS, nor has he made any payments to the IRS in the past five years. There is some evidence of mitigation under AG ¶ 20 (c); however, there is insufficient evidence in the record that Applicant's tax issues are under control or being resolved.

Applicant maintained in his August 2021 response to interrogatories that he owed SDOR \$32,238. However, the notice of collection letters and the payment agreement demonstrate that his outstanding balance is actually \$67,793.83. Starting in February 2022, his checking account is going to be auto-drafted \$1,129.90 monthly. However, he did not provide a budget to demonstrate that he has the ability to make these payments, nor has he provided proof of any payments. There is a lack of evidence in the record to demonstrate that he is in compliance with the payment agreement to mitigate this allegation. Additionally, if I accept that he is in compliance, and has made his February, March, and April payments, three payments are insufficient to demonstrate a track-record of compliance to mitigate the underlying concerns.

Regarding the failure to file tax returns, the DOHA Appeal Board has commented:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward *inducing an applicant to file tax*

returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. Id. A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis in original). See ISCR Case No. 15-01031 at 4 (App. Bd. June 15, 2016) (citations omitted); ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015). The Appeal Board clarified that even in instances where an “[a]pplicant has purportedly corrected [his or her] federal tax problem, and the fact that [applicant] is now motivated to prevent such problems in the future, does not preclude careful consideration of [a]pplicant’s security worthiness in light of [his or her] longstanding prior behavior evidencing irresponsibility” including a failure to timely file federal income tax returns. See ISCR Case No. 15-01031 at 3 & n.3 (App. Bd. June 15, 2016) (characterizing “no harm, no foul” approach to an applicant’s course of conduct and employing an “all’s well that ends well” analysis as inadequate to support approval of access to classified information with focus on timing of filing of tax returns after receipt of the SOR).

In ISCR Case No. 15-01031 (App. Bd. June 15, 2016), the Appeal Board explained that in some situations, even if no taxes are owed when tax returns are not timely filed, grant of access to classified information is inappropriate. In ISCR Case No. 15-1031 (App. Bd. June 15, 2016) the applicant filed his 2011 federal income tax return in December 2013, his 2012 federal tax return in September 2014, and his 2013 federal tax return in October 2015. He received federal tax refunds of at least \$1,000 for each year. Nevertheless, the Appeal Board reversed the administrative judge’s decision to grant access to classified information.

In ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017) the Appeal Board reversed the grant of a security clearance, discussed how AG ¶ 20(g) applied, and noted:

The timing of the resolution of financial problems is an important factor in evaluating an applicant’s case for mitigation because an applicant who begins to resolve financial problems only after being placed on notice that his clearance was in jeopardy may lack the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his own interests. In this case, applicant’s filing of his Federal income tax returns for 2009-2014 after submitting his SCA, undergoing his background interview, or receiving the SOR undercuts the weight such remedial action might otherwise merit.

In this case, Applicant has yet to file his TY 2013 federal and state income tax returns. He owes over \$200,000 collectively to the IRS and SDOR and has made minimal

