



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



In the matter of:)
)
) ISCR Case No. 21-02270
)
Applicant for Security Clearance)

Appearances

For Government: Dan O’Reilly, Esq., Department Counsel
For Applicant: *Pro se*

07/27/2022

Decision

LOUGHRAN, Edward W., 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 27, 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 3, 2022, and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on April 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 May 18, 2022.

The case was assigned to me on June 16, 2022. There are two documents in the case file dated “31MAR2022,” with the subject line “RESPONSE TO STATEMENT OF

REASONS DATED 27JAN2022.” They are similar but not identical. I have marked them as Applicant’s Exhibits (AE) A and B, and admitted them without objection.

Because it was unclear if the documents were responses to the FORM or supplemental responses to the SOR, I requested Department Counsel to check. Department Counsel contacted Applicant, and the record was reopened for him to submit additional documents. He submitted an email and additional documents that I have marked (AE) C through F and admitted without objection. The Government exhibits included in the FORM are admitted in evidence without objection.

Findings of Fact

Applicant is a 32-year-old employee of a defense contractor. He has worked for his current employer or a predecessor company on the same contract since December 2009. He is a high school graduate. He is married with two children, ages 14 and 8. (Items 3, 4)

Applicant has a history of financial problems, including delinquent debts, unfiled tax returns, and unpaid taxes. The SOR alleges six delinquent debts totaling about \$53,800 (SOR ¶¶ 1.a-1.f), and that Applicant did not file his federal (SOR ¶ 1.g) and state (SOR ¶ 1.h) income tax returns when they were due for tax years 2018 and 2019.¹ Applicant admitted all of the SOR allegations.

Applicant attributed his financial problems to his wife losing her job, his son’s medical problems, and helping his family members financially. He also admitted that the financial issues were due to his “being a young irresponsible adult at the time, putting off monthly bills just to buy the latest shoe or device that came out.” He did not have enough taxes withheld from his pay, so he owed taxes when it came time to file his tax returns. (Item 3, 4; AE A, B)

Applicant reported his tax issues and financial problems on a Questionnaire for National Security Positions (SF 86) that he submitted in March 2020. He discussed the same issues during a background interview in April 2020. He stated that he started working with a debt consolidation service in March 2020. He stated that he was paying \$200 to \$225 per month, and his delinquent debts were being handled by the service. (Items 3, 4)

Applicant retained a tax expert. While he did not submit direct proof that the old returns were filed, he submitted proof that he entered into an installment agreement with the IRS in October 2021 to address taxes owed from 2012 and 2016 through 2019. He agreed to pay \$150 per month, starting in November 2021, to increase to \$365 per month in November 2022. Applicant stated that the current balance owed to the IRS is \$25,865. He did not submit any documents about his state taxes. (AE A, B, D)

¹ The SOR did not allege that Applicant owed back taxes. Any matter that was not alleged in the SOR will not be used for disqualification purposes. It may be considered in the application of mitigating conditions and in the whole-person analysis.

In his response to the SOR, Applicant admitted that he owed the \$27,201 charged-off auto loan alleged in SOR ¶ 1.a. The debt is listed on credit reports from July 2021 and April 2022. The account was reported as opened in March 2020 and becoming delinquent in June 2020. He did not discuss this debt during his background interview in April 2020, but the credit reports indicate the debt was not delinquent at that time. In his response to the FORM, he wrote that it was an incorrect reporting. He indicated that “a better rate was quoted to [him] which [he] took instead of this loan not sure why it’s reporting in a delinquent state. This car loan is current will attach ledger proving so.” If Applicant has such a ledger, it was not submitted. (Items 2, 4-6; AE A, B)

Applicant reported the \$12,852 charged-off auto loan (SOR ¶ 1.b) on his SF 86; he discussed it during his background interview; and he admitted it in his response to the SOR. The debt is listed on the 2021 Equifax credit report. The activity date is April 2018. The debt is not listed on the April 2022 Equifax credit report. In his response to the FORM, he wrote that the debt had been disputed by his credit consolidation service, and he was awaiting resolution. (Items 2-6; AE A, B)

SOR ¶ 1.c alleges a \$12,366 charged-off auto loan. During his background interview in April 2020, he agreed that the account was \$1,176 and 30 days past due (a credit report from 2020 was not submitted in evidence). He stated that since December 2020, he had been paying an extra \$100 per month to bring the account current. The credit reports from 2021 and 2022 indicate the debt was opened in May 2018 and became delinquent in June 2020. The April 2022 credit report indicates that the last payment date was March 2022, and the balance was \$11,791, which was less than the \$12,366 balance reflected on the 2021 credit report. Applicant admitted owing the debt in his response to the SOR. He wrote in his response to the FORM that the debt had been disputed by his credit consolidation service for “failure to provide loan deficiencies information.” He wrote that the debt “was in process to be resolved.” (Items 2, 4-6; AE A, B)

Applicant admitted owing the \$632 (SOR ¶ 1.d) and \$628 (SOR ¶ 1.e) charged-off debts owed to the same credit union. He wrote in his response to the FORM that the debts had been disputed by his credit consolidation service “to come to an agreement to settle on,” and that the debts were “in progress to be resolved.” (Items 2, 4-6; AE A, B)

Applicant initially admitted owing the \$182 medical debt (SOR ¶ 1.f), but later disputed it. The debt is identified only by an account number on the 2021 credit report and in the SOR. It is not listed on the April 2022 credit report. (Items 2, 5-6; AE A, B)

Applicant stated that when his wife obtained a stable job, they took the necessary steps to get everything in order. He has been working with a credit specialist and a tax specialist. His financial statement shows that he is paying \$250 per month to the IRS and \$250 per month to a company that is apparently his credit specialist. The financial statement shows net monthly income of \$10,558; monthly expenses, including payments to the IRS and credit specialist, of \$7,150, and a remainder of \$3,408. He recently received a raise. (Items 2-6; AE A, B, D-F)

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 financial problems, including delinquent debts and unfiled federal and state income tax returns. AG ¶¶ 19(a), 19(c), and 19(f) are applicable.

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;

(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 has 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 actions 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 attributed his financial problems to his wife losing her job, his son's medical problems, and helping his family members financially. He also admitted that the financial issues were due to his "being a young irresponsible adult at the time, putting off monthly bills just to buy the latest shoe or device that came out."

While he did not submit direct proof that the old income tax returns were filed, he submitted proof that he entered into an installment agreement with the IRS in October 2021 to pay \$150 per month, starting in November 2021, to increase to \$365 per month in November 2022 for tax years 2012 and 2016 through 2019. The current balance is \$25,865. I accept that the federal returns were filed. The state returns were likely also filed. The status of how much if anything is owed to the state is unknown. AG ¶ 20(g) is applicable to the filed income federal income tax returns. I am also extending it to the state income tax returns. However, that does not end the discussion.

Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and paying taxes when due, 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. 17-01382 at 4 (App. Bd. May 16, 2018). This is true even when the returns are eventually filed.

The unidentified medical debt in SOR ¶ 1.f is mitigated. Applicant admitted owing all of the other debts, but later disputed some of them. I did not see sufficient evidence to conclude that he is not responsible for the debts. The fact that a debt is not listed on the most recent credit report provides little mitigation. See, e.g., ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 15, 2015). Applicant provided no documentation that he actually paid or is paying any of the SOR debts. The Appeal Board has held that "it is reasonable for a Judge to expect applicants to present documentation about the

satisfaction of specific debts.” See ISCR Case No. 09-07091 at 2 (App. Bd. Aug. 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)). He indicated that he is working to settle two debts. However, intentions to resolve financial problems 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).

There is insufficient evidence for a determination that Applicant’s financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. Security concerns about Applicant’s finances 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.

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. I conclude Applicant did not mitigate the financial considerations security concerns.

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.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.h:	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.

Edward W. Loughran
Administrative Judge