



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 21-02266
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: Sean C. Donohue, Esq.

07/22/2022

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant failed to timely file his federal and state income tax returns and pay taxes owed for tax years 2014 through 2019. Largely due to actions taken by his cohabitant girlfriend, he filed his delinquent returns before they became an issue for his security clearance eligibility. He has satisfied his state income-tax delinquency, and has been repaying his past-due federal income taxes since November 2021. Even so, some financial considerations security concerns persist. Clearance eligibility is denied.

Statement of the Case

On November 10, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F, financial considerations. The SOR explained why the DCSA CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DCSA CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2,

1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

On January 9, 2022, Applicant, then *pro se*, responded to the SOR allegations and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On March 1, 2022, the Government indicated it was ready to proceed to a hearing. On March 18, 2022, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case assignment and file on March 28, 2022.

After some coordination with the parties, on May 12, 2022, I scheduled a hearing for June 8, 2022. On May 19, 2022, counsel for Applicant entered his appearance. I convened the hearing as scheduled on June 8, 2022. Three Government exhibits (GE 1-3) and one Applicant exhibit (AE A) were admitted in evidence. Applicant and a close friend of his testified, as reflected in a hearing transcript (Tr.) received by DOHA on June 21, 2022.

Findings of Fact

The SOR alleges that Applicant failed to file, as required, federal (SOR ¶ 1.a) and state (SOR ¶ 1.b) income tax returns for tax years 2014 through 2019, and that, as of November 2021, he owed delinquent federal taxes of \$24,294 (SOR ¶ 1.c) and state taxes of \$4,553 (SOR ¶ 1.d) for tax years 2014 through 2020. When Applicant responded to the SOR, he admitted that he failed to file his tax returns by the tax deadlines and that he owed delinquent federal income taxes. He denied that he had any outstanding state taxes as he had satisfied his state tax debt. He indicated that he has taken full responsibility for the mistakes he made and that he is current on a monthly payment plan with the Internal Revenue Service (IRS) for his federal taxes.

After considering the pleadings, exhibits, and transcript, I make the following findings of fact:

Applicant is a 54-year-old self-employed master plumber. He has worked for himself since July 2006 and handles all the paperwork for his business. (Tr. 16-17.) He has accepted an offer of employment with a defense contractor contingent on him obtaining a DOD security clearance. (Tr. 16-19.) He briefly taught plumbing at a vocational technical high school from August to September 2014 but did not enjoy teaching. (GE 1.) He was married from July 1990 to October 2000 and has two sons, ages 31 and 29. He and his current girlfriend have been cohabiting since August 2007, except for a brief breakup. (GE 1; Tr. 45.)

Struggling with the paperwork for his business and seeking a change, Applicant applied for employment with a defense contractor. (Tr. 15-18.) On April 7, 2021, he completed a Questionnaire for National Security Positions (SF 86). He had not previously held a DOD security clearance. In response to an SF 86 inquiry into whether, in the last

seven years, he had failed to file returns or pay federal, state, or other taxes required by law, Applicant disclosed that he failed to file federal and state income tax returns for tax years 2014 through 2019 “due to a broken computer,” but he retained the services of an accountant in November 2020 and filed all of his delinquent tax returns. He admitted owing some federal and state income taxes totaling \$1,752 (federal only) for tax year (TY) 2014; \$13,585 (federal \$11,791 and state \$1,794) for TY 2015; \$9,015 (federal \$8,028 and state \$987) for TY 2016; \$13,943 (\$11,826 federal and \$2,117 state) for TY 2017; \$9,877 (\$8,405 federal and \$1,472 state) for TY 2018; and \$11,052 (\$9,462 federal and \$1,590 state) for 2019. He reported that he was on a payment plan with the state but still arranging for repayment of his federal taxes with the IRS. (GE 1.)

On June 7, 2021, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). He explained that he was paying \$748 per month toward his outstanding state tax debts, currently totaling \$7,030, but was in the process of setting up a repayment plan with the IRS for \$57,652 in outstanding federal income taxes. He volunteered that he had not yet paid \$6,388 in federal income taxes and \$633 in state income taxes for tax year 2020. He explained about his tax filing and tax delinquency issues that the computer that contained the financial information for his plumbing business had a malfunction in 2014. When it came time to prepare the income tax returns for his self-employment as a plumber for TY 2014, he did not have the information needed to complete his federal and state income tax returns. He continued to neglect his tax filing and tax payment obligations for subsequent tax years. He denied any intention to evade taxes and explained that he was in the process of refinancing his mortgage to pay his back taxes with the equity on his home. (GE 2.)

Applicant knew that he should rectify his tax issues, but he felt overwhelmed by all the paperwork that would be required to file his delinquent returns and was “scared of the ramifications” for not filing, so he “let it go.” The IRS never sent him any notices inquiring about his unfiled returns, although he feared that he would receive a notice from the IRS. (Tr. 43.) He and his girlfriend discussed his failure to file, and eventually the pressure he felt adversely affected his relationship with his cohabitant girlfriend to where she decided on her own in November 2020 to take steps to address his tax issues. They restarted QuickBooks and re-enter all the information for the previous six years, and she took his paperwork to his accountant on her own. (Tr. 17-19, 30-32, 43-45.) Applicant had used this accountant to file his taxes for tax years prior to 2014. (Tr. 31.) During the six consecutive years that he disregarded his known obligation to file returns, he did not set aside any money for taxes. (Tr. 38.)

In response to DOHA interrogatories, Applicant indicated on September 29, 2021, that he was currently working with the state and the IRS to satisfy his back taxes and penalties. He related that he submitted a large lump-sum payment to the IRS and was in repayment plans with both the state and the IRS. (GE 2.) In response to a request from DOHA for details about his tax payments, Applicant explained that he obtained \$38,000 from his mother and made lump-sum payments to the IRS of \$21,045; \$12,313; \$3,195; \$2,100; and \$76. He provided documentation showing a deposit of \$38,000 into his checking account on July 27, 2021; payments of \$21,045 and \$12,313 to the IRS on July

28, 2021; and an installment agreement with the IRS requiring him to pay \$965 per month starting November 1, 2021. For the state taxes, he submitted evidence of his \$748 monthly payments between April 15, 2021, and September 7, 2021. He estimated that his state taxes would be paid off within the next five months. (GE 3.) Applicant obtained the \$38,000 from his mother because he had to make a large lump-sum payment to the IRS before he could get on a repayment plan for his delinquent federal income taxes. His tax returns had been filed, but the IRS was threatening to file a lien on his house. (Tr. 21, 46.)

A current payment record from the IRS shows that Applicant made a payment of \$2,100 to the IRS on August 26, 2021, and monthly payments of \$965 from November 2021 through June 2022. All of these tax payments were applied to his tax liability for TY 2016. Additionally, he made a \$8,899 payment on April 30, 2022, with his return for TY 2021. (AE A.) He obtained the funds for that payment from an old retirement account that he had for about 20 years that he had not contributed to. (Tr. 37.) He testified that his state tax liability was settled on his final payment of approximately \$2,500, which was a reduced balance from the amount remaining. (Tr. 20, 35.) He estimates that he owes about \$43,000 to \$44,000 in federal income taxes as of June 2022. (Tr. 20-21.)

Applicant understands that he made a “poor choice” in failing to timely file his income tax returns and pay his taxes. (Tr. 15, 29.) He is able to meet his current financial obligations, although he does not have any savings and has been taking on extra jobs to ensure that he has the funds to make his federal income tax payments. He has checking deposits totaling \$5,000. (Tr. 39-41.) His cohabitant girlfriend contributes to the household income. (Tr. 26.) Applicant’s monthly expenses include \$1,700 for his mortgage loan (balance \$167,000); \$250 for cable services; \$500 for a van loan (balance \$10,000); \$100 for electricity; and an average of \$100 for heating. (Tr. 22-23.) His home is currently valued at \$420,000. He intends to refinance the mortgage on his home or obtain a home-equity loan to give him the funds to pay off his federal income tax debts. (Tr. 23, 41.) He tried to refinance last year but his income was not enough to qualify for the loan. (Tr. 39.) If granted a security clearance, he will earn about \$25.50 an hour with the defense contractor. (Tr. 24.) In May 2022, Applicant learned that there are open positions for which he may be qualified that do not require a security clearance. He has not pursued any of those opportunities while a decision on his security clearance eligibility is pending. (Tr. 29.)

Character Reference

A close friend of Applicant’s for about 30 years testified that Applicant is reputed among their community to be of strong character, a hard worker, and always willing to help others. This friend, who works as a federal probation officer, became aware of Applicant’s tax issues when Applicant applied to work for the defense contractor as he helped Applicant with his application for employment. They had discussed taxes previously over the years, but primarily it was about the challenges Applicant had with managing his records as a small business owner. This friend does not consider Applicant a security risk as Applicant is working hard to rectify his tax situation. (Tr. 50-56.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by 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 that the 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

The security concerns about financial considerations are articulated 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 Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

Applicant did not file his federal and state income tax returns when they were due for TYs 2014 through 2019. Section 6012 of the United States Code requires the filing of an income tax return by the tax deadline if his or her gross income equals or exceeds the sum of the exemption amount plus the basis standard deduction applicable to him or her, whether or not a tax refund is expected. While the record does not contain any details about Applicant's income for the TYs at issue, it may be reasonably inferred from the evidence of his significant federal and state tax liabilities for the TYs that he was required to file tax returns.

Applicant may not have intended to evade paying taxes, but the evidence shows that for several consecutive tax years (2014 through 2020) he did not pay the taxes he was required to pay. He reported on his SF 86 that he owed past-due income taxes of \$51,264 to the IRS and \$7,854 to the state as of April 2021. Either he underestimated the extent of his federal tax liability or his tax calculations did not include penalties and fees, as he testified that his tax debt with the IRS is currently \$43,000 to \$44,000. This tax balance is after he made lump-sum payments totaling more than \$33,300 in July 2021, a \$2,100 payment in August 2021, and eight payments of \$965 each under a repayment plan from November 2021 through June 2022. Disqualifying condition AG ¶ 19(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," clearly applies. Moreover, AG ¶¶ 19(a) and 19(c) are also established. Despite not setting aside any money for taxes over the years,

he had not managed to accumulate any significant savings. He had to withdraw money from an old retirement account to pay his taxes for 2021 and had to ask his mother for \$38,000 to pay the sizeable lump-sum payments to the IRS so he could avoid a tax lien and repay his federal tax debts under an installment plan.

Applicant has the burdens of production and persuasion in establishing sufficient mitigation to overcome the financial concerns raised by his noncompliance with such an important obligation as filing his tax returns and paying his taxes on time. One or more of the following conditions under AG ¶ 20 may apply in whole or in part:

(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; 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.

AG ¶ 20(a) cannot reasonably apply, given Applicant's failure to comply with his income tax-filing and tax-payment obligations for several consecutive years. Although he rectified his tax-filing issues before he applied for a security clearance in April 2021, his reform is incomplete as he still owes between \$43,000 and \$44,000 in delinquent federal income taxes. An applicant's ongoing, unpaid debts evidence a continuing course of conduct and are considered recent. See, e.g., ISCR 17-03146 at 2 (App. Bd. Jul. 31, 2018), citing, e.g., ISCR Case No. 15-08779 at 3 (App. Bd. Nov. 3, 2017).

AG ¶ 20(b) requires that an individual act responsibly under his or her circumstances, and Applicant's evidence falls considerably short in that regard. The computer malfunction that led to the loss of the data needed to timely file his returns mitigates at most a delay in filing his income tax returns for tax year 2014. Applicant admits that the steps taken in November 2020 to rectify his tax filings — reinstalling QuickBooks and re-entering the information — could have been done years earlier. His fear of the possible repercussions for not filing returns for TY 2014 do not justify or excuse his noncompliance with his tax-filing and tax-payment obligations for TYs 2015 through 2019.

He admitted that, as the years went on and no action was taken by the IRS, he “just let it go.”

AG ¶¶ 20(c), 20(d), and 20(g) have some applicability because Applicant filed his delinquent tax returns and had a repayment plan established for his state taxes before they became an issue for his security clearance. Applicant made his first payment to the state on April 15, 2021, a week after he completed his SF 86, and he made monthly payments consistently thereafter until he paid \$2,500 to settle the remaining balance. His state tax debt was satisfied before he answered the SOR. Applicant has shown some good faith under AG ¶ 20(d) and a willingness to resolve his tax debts under AG ¶ 20(g) by complying with his installment agreement with the IRS. As of June 1, 2022, he had made nine payments of \$965 each.

At the same time, Applicant’s case in mitigation is undermined in one significant aspect in that his cohabitant girlfriend initiated the action to rectify his tax issues. Applicant was not motivated for years to address his tax issues, and there is no indication that he would have acted to correct his tax situation before it became an issue for his security clearance, and perhaps not even then. The difficulty that Applicant had in managing the books for his business notwithstanding, he had used an accountant previously to file his taxes. He had no reasonable explanation for not seeking professional assistance to correct his tax issues in a timely fashion. While he is not required to fully satisfy his tax debts to be granted security clearance eligibility, under his current repayment plan it will take more than three years to repay some \$43,000 to \$44,000 in past-due federal taxes. His persistent disregard of his income tax filing and payment obligations is inconsistent with the good judgment, trustworthiness, and reliability that is required to hold a security clearance. The financial considerations security concerns are not fully mitigated at this time.

Whole-Person Concept

In assessing the whole person, the administrative judge must consider the totality of Applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). Those factors are:

- (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.

The analysis under Guideline F is incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

The Appeal Board has made clear that voluntary compliance with such rules and systems as those pertaining to filing returns and paying taxes is essential for protecting classified information. See, e.g., ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016). It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). Based on the evidence of record, it is not clearly consistent with the interests of national security to grant or continue security clearance eligibility for Applicant at this time.

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.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Elizabeth M. Matchinski
Administrative Judge