



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



In the matter of:)
)
) ISCR Case No. 20-01623
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

09/15/2022
Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant failed to mitigate the security concerns raised by his history of financial problems – his inability to timely file his federal and state income tax returns and his history of delinquent student loans. Clearance is denied.

Statement of the Case

On October 8, 2020, the DOD issued an SOR detailing security concerns under the financial considerations guideline. This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017.

DOD adjudicators were unable to find that it is clearly consistent with the national interest to continue Applicant’s security clearance and recommended that the case be submitted to a Defense Office of Hearings and Appeals (DOHA) administrative judge for a determination whether to grant his security clearance. Applicant timely answered the SOR and requested hearing.

The hearing was convened on December 8, 2021. Although Applicant agreed to the hearing date in early November 2021, he did not receive the Notice of Hearing until November 29, 2021, less than 15 days before the hearing. In an email dated November 30, 2021, he waived the 15-day notice requirement. During the Government's case-in-chief, neither party could confirm whether or not Applicant received the disclosure letter and proposed exhibits Department Counsel sent to Applicant on January 25, 2021. In light of potential due process concerns, I continued the hearing and ordered Department Counsel to provide the disclosure letter and proposed documents to Applicant via U.S. Mail and DOD SAFE. Department Counsel complied with the order on December 9, 2021. Applicant confirmed receipt of the electronic documents on December 10, 2021.

The hearing reconvened on January 18, 2022. I appended to the record as Hearing Exhibits (HE):

HE I: Prehearing Order, dated November 18, 2021;

HE II: Government's Disclosure Letter to Applicant, dated January 25, 2021;

HE III: 15-day Notice Waiver E-mail, dated November 30, 2021;

HE IV: Transcript (Tr.) of the December 8, 2021 Hearing;

HE V: Applicant's E-mail Confirming Receipt of Disclosure Letter, dated December 10, 2021; and

HE VI: Department Counsel E-mail of No Objection to Post-Hearing Submissions, dated September 12, 2022.

I also admitted Government's Exhibits (GE) 1 through 6, and Applicant's Exhibits (AE) A through E, without objection. I left the record open after the hearing for Applicant to submit additional documentation. He timely submitted AEs F through S, as listed below, without objection from Department Counsel:

AE F: IRS Tax Transcript, Tax Year 2016, dated February 18, 2022 (2 pages);

AE G: IRS Tax Transcript, Tax Year 2017, dated February 18, 2022 (2 pages);

AE H: 2018 Federal and State Tax Return Cover Letter, dated January 25, 2022 (1 page);

AE I: 2018 Federal Tax Return, dated February 1, 2022 (1 page);

AE J: 2018 State Tax Return, dated February 1, 2022 (3 pages);

AE K: E-Sign Disclosure Letter, dated January 3, 2020 (1 page);

AE L: Pictures of 2018 Federal and State Tax Return (4 pages);
AE M: State Confirmation of Bill Payment (1 page);
AE N: Student Loan Obligation Statement, Acct. No. 798581 (6 pages);
AE O: Student Loan Obligation Statement, Acct. No. 762581 (6 pages);
AE P: Student Loan Obligation Statement, Acct. No.798581 (7 pages);
AE Q: Student Loan Obligation Statement, Acct. No.751577 (6 pages);
AE R: Student Loan Obligation Statement, Acct. No.746577 (6 pages); and
AE S: Lexington Law Case Detail Summary (3 pages).
DOHA received the transcript on January 25, 2022.

Findings of Fact

Applicant, 63, has worked as a program manager for a federal contracting company since 2019. He also serves as pastor to a church that he and his wife founded in 2014. He served in the in the U.S. Air Force from 1976 until retiring in 1998 as a Master Sergeant. He held a security clearance at various levels during his military service. The record does not contain any evidence of any security violations or other incidents of concern related to Applicant's past handling and safeguarding of classified information. He completed his most recent security clearance application in March 2019. He disclosed that he had not filed his federal income tax returns for 2016 and 2017. The background investigation developed additional derogatory information. The credit reports in the record as well as Applicant's responses to DOHA issued interrogatories serve as the basis for the Government's financial concerns. The SOR alleges that Applicant failed to file his federal and state income tax returns from 2016 to 2018 (SOR ¶¶ 1.a – 1.b); that he owed approximately \$24,516 in federal taxes (SOR ¶¶ 1.c – 1.d); that he owed over \$112,389 in delinquent student loans (SOR ¶¶ 1.e – 1.h); and that he owed \$7,884 on two delinquent accounts. (Tr. 21-24; GE 1)

Applicant admits the he failed to filed his income tax returns for the 2016 through 2018 tax years. Consequently, the IRS filed substitute returns for the 2016 and 2017 tax years, resulting in the Agency assessing him over \$24,516 in additional federal taxes. At the hearing, he testified that he also failed to timely file his 2019 and 2020 federal income tax returns. Applicant took responsibility for his failure to timely file his income tax returns, claiming oversights on his part. He testified that a flood in his home in Spring 2021 prevented him from gathering the documentation he needed to file his 2018 through 2020 tax returns. (Tr. 24, 45-47; GE 3; AE F-G)

Applicant self-prepared his 2016 income tax returns, but used a tax preparer for the 2017 and 2018 tax years. According to updated IRS transcripts (AE F – G), Applicant filed the 2016 federal income tax return in March 2020, indicating he was owed a \$10,137 refund that was applied to the outstanding \$17,531 tax liability for the 2017 tax year. He filed the 2017 tax return in April 2020, indicating that he was owed a \$17,889 refund of which the IRS transferred \$11,244 to another, unspecified non-IRS debt. He also provided a receipt from the state tax authority showing payment of \$2,673 in taxes for the 2016 and 2017 tax years. (Tr. 39-45, 58-60; AE A-C)

Applicant provided a completed copy of his 2018 federal and state income tax returns, signed by Applicant and his wife in February 2022. He overpaid his state and federal income taxes and was due a refund. He provided photographs showing that he mailed the returns to the state and federal tax authorities on February 22, 2022. At the time the record closed, Applicant did not provide any evidence that he had filed his 2019 or 2020 income tax returns. (Tr. 46-47; AE C, I-M)

After separating from the Air Force, Applicant earned a bachelor's and master's degrees and completed some additional post-graduate work toward a doctoral degree. He financed his education through student loans. He testified that between 2015, when he stopped taking classes, and 2020, he did not make any payments toward his student loans. He could not afford to make payments consistently as the obligation was nearly \$3,000 per month. Applicant claimed that two periods of unemployment between November 2017 and March 2018, and November 2018 to January 2019, also prevented him from paying his student loans as he focused on paying his household bills. At time of the hearing, the loans were in forbearance under the COVID -19 student loan payment pause announced by President Biden in March 2020. Applicant contacted his loan servicer to arrange his participation in a rehabilitation program set to begin in March 2022, with a monthly payment of \$1,400. Since then, President Biden has extended the student loan payment moratorium through January 1, 2023. It is unknown if Applicant decided to begin participation in the rehabilitation program as scheduled, or to keep the loans in forbearance status. (Tr. 26-27, 31-36, 60-62,65; AE E, N-R)

The SOR alleges the Applicant also owes two delinquent consumer accounts. According to a credit report, dated January 2022, Applicant paid the \$987 charged-off account alleged in SOR ¶ 1.i. (AE D) Applicant claims that he does not recall incurring the debt alleged in SOR ¶ 1.j (\$6,897) owed to the university where he did his post-graduate studies. That debt remains unresolved. (Tr. 27-30, 62-63; GE 4-6)

Applicant testified that he and his wife have been working on rehabilitating their finances since 2016 or 2017, engaging a credit repair organization to help them clean up their credit histories. To date, the credit-repair company has helped Applicant to remove 44 negative items from his credit report. (Tr. 69-71; AE S)

Applicant currently earns \$120,000 per year and enjoys an annual household income of over \$270,000, including his wife's salary and his military retirement income. He also receives a housing stipend from his church (Tr. 24, 36-37)

Policies

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(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 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

Failure to meet one's 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. An individual who is financially over extended is at a greater risk of having to engage in illegal or otherwise questionable acts to generate funds. (AG ¶ 18)

The record establishes the Government's *prima facie* case. Applicant has demonstrated both a history of financial problems, evidenced by a history of delinquent student loan accounts, as well as a failure to timely comply with his federal and state tax obligations.

The following financial considerations disqualifying conditions apply:

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(c) a history of not meeting financial obligations; and,

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.

Applicant has a history of financial problems dating back to at least 2016. There is some evidence in mitigation, two periods of unemployment, totaling eight months between November 2017 and January 2019, as well as his participation in a credit repair plan. He has filed the 2016 and 2017 federal and state income tax returns alleged in the SOR, and did not owe additional federal taxes as indicated by the substitute tax returns filed by the IRS. Though not alleged in the SOR, he provided evidence of a paid state tax liability for the 2016 and 2017 tax years. AG ¶ 20 (g), "the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is compliance with those arrangements," partially applies. Applicant still has outstanding federal and state tax returns for at least 2018 through 2020. His continued failure to timely file his federal and state income tax returns indicates that he still does not have a handle on his tax obligations. He provided no compelling reason for his inability to do so. Although Applicant's student loans are in good standing as a result of the student loan payment pause, this is not considered evidence of rehabilitation because he has not established a track record of repayment. Because evidence of ongoing financial problems remains, the financial considerations concern is not fully mitigated.

Based on the record, doubts remain about Applicant's suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). During his 22-year military career, Applicant held a security clearance without incident. He is also involved his local community through the church he

founded and leads with his wife. However, Applicant failed to present sufficient evidence to mitigate the security concerns raised by his ongoing failure to meet his federal and state income tax obligations. He has also failed to establish that his delinquent student loan debt is rehabilitated or otherwise under control.

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, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 1.a - 1.b, 1.e - 1.j:	Against Applicant
Subparagraphs 1.c – 1.d:	For Applicant

Conclusion

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

Nichole L. Noel
Administrative Judge