



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



In the matter of:)
)
) ISCR Case No. 21-00910
)
Applicant for Security Clearance)

Appearances

For Government: Allison Marie, Esq., Department Counsel
For Applicant: *Pro se*

09/12/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On September 22, 2021, the Defense Counterintelligence and Security Agency issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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 adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on October 18, 2021, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on February 22, 2022. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 3 through 7. (Item 1 is the SOR and Item 2 is a receipt). Applicant did not submit a response to the FORM or file objections to any evidence offered. All Items are admitted into evidence. The case was assigned to me on May 5, 2022.

Findings of Fact

Applicant admitted both of the SOR allegations in ¶¶ 1.a and 1.b with explanations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 61 years old. He served in the armed forces from 1983 to 1995 and received an honorable discharge. He married in 1988 and has two adult children. He earned a bachelor's degree in 1983 and a master's degree in 2001. He has been employed by a federal contractor since December 2019.

Applicant disclosed in his October 2019 security clearance application (SCA) that he was unemployed from January 2014 until September 2019. He also disclosed that he had not filed federal or state income tax returns for tax years 2015 through 2018, and explained that he had no income during those years due to his unemployment, and therefore was not required to file. During his December 2019 background investigation with a government investigator, he stated that he checked the Internal Revenue Service (IRS) and his state's Department of Taxation (DOT) websites for the subject tax years and confirmed his income fell below the required filing threshold. (Items 4, 5)

In December 2019 Applicant received a notice from his state's DOT that he owed \$6,316 for tax year 2016. Applicant told the investigator that he intended to dispute the amount owed, but he would pay the balance if it was determined to be correct. In January 2020, Applicant paid the DOT \$6,350. In his Answer to the SOR, he stated that he resolved his state tax issue and will continue to work with the DOT to resolve any outstanding issues. He said he had not received any income in his state for the other tax years alleged. To address the possibility that he owed federal taxes, he submitted a payment to the IRS for \$2,500 in mid-December 2019. In his Answer to the SOR, he said he sent the IRS another \$1,200 to cover any estimated penalties. (Items 3, 5, 6)

Applicant answered Government interrogatories in January 2021. The Interrogatories specifically requested that Applicant provide copies of his 2015 to 2018 IRS tax transcripts so it could verify the status of his filings and verify if he did not need to file for those years. He stated that he had not received the documents in time, so did not provide them with his Answer. (Item 6)

In his Answer to the SOR, Applicant stated that he has inquired of the IRS about the status of any balance he owed or refund he was due for tax years 2015 through 2018. At that time, he said he had not yet received a response. He said he intended to continue to work with the IRS and DOT to resolve any tax matters. He did not provide copies of the

IRS tax transcripts for tax years 2015 through 2018 that he had said he was waiting for when he completed the interrogatories in January 2021. (Item 3)

Applicant told the government investigator that his wife worked during the tax years in question, but did not earn enough income to require filing. While unemployed, he lived off of his savings and investments. He said he ensured he had the required tax withheld from his distributions. In his SOR answer, he said that he always prepaid any taxes owed when he redeemed his investments. (Items 3, 5)

Distributions of investments are included in a taxpayer's gross income from all sources, which are the basis for federal and state income tax return filing requirements. Applicant did not provide a copy of his tax transcripts for any of the tax years in question that might show he was not required to file for each of the tax years. (Item 3, 5)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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 concern relating to the guideline 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following is potentially applicable:

(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 disclosed in his 2019 SCA that he had failed to file his 2015 through 2018 federal and state tax returns. He reiterated his admissions during his background interview. There is sufficient evidence to support the application of the above disqualifying condition.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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; 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 admitted he failed to file his 2015 through 2018 federal and state income tax returns. He asserted that he did not believe he was required to file during these years because his income level was below the minimum income amount. He received a tax bill from his state's DOT indicating he owed taxes for tax year 2016. The amount he owed, \$6,350, suggests that the amount of income to produce such a tax liability easily exceeds the IRS threshold of \$20,700 for that tax year. This should have raised a red flag to him that perhaps he was required to file during the years he was unemployed. His wife was working and he was receiving distributions from his investments, which are included in the calculations of a taxpayer's gross income from all sources, which amounts form the basis for federal and state income tax returns filing requirements. It is possible that Applicant and his wife's joint income in subject tax years did not meet the IRS' threshold for required filing. Applicant has repeatedly had the opportunity to provide the requested IRS tax transcripts and other documentary evidence in his SOR Answer, response to the government interrogatories, and as specifically requested in the FORM, but he has failed to provide the evidence to support his position.¹ The above mitigating conditions do not apply.

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 the 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

¹ www.irs.gov

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.

No documentary evidence was presented to confirm Applicant's assertion that he was not required to file federal or state income tax returns for tax years 2015 through 2016. 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 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).

Applicant failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations.

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:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge