



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



In the matter of:)
)
) ISCR Case No. 21-00930
)
Applicant for Security Clearance)

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

06/02/2022

Decision

HYAMS, Ross D., Administrative Judge:

Applicant did not provide sufficient information to mitigate the financial considerations security concerns arising from his charged-off debts, his failure to timely file Federal and state income tax returns, and pay outstanding Federal and state tax debts. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 27, 2020. On July 15, 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. He responded to the SOR on September 23, 2021, with a narrative statement and requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record in lieu of a hearing.

On December 20 2021, Department Counsel submitted the Government's file of relevant material (FORM) including Items 1-13. A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. He received the FORM

on January 24, 2022. A response was due on February 23, 2022, but none was received. The case was assigned to me on April 8, 2022.

Items 1 and 2 are the SOR and Applicant's Answer, which are the pleadings in the case. Items 3 – 13 are admitted without objection.

Findings of Fact

In his Answer, Applicant admitted all of the SOR allegations (§§ 1.a – 1.i). He also provided an explanation for each of the allegations. Applicant's admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 62 years old. He has been employed as a logistics management specialist by a defense contractor since 2017. He was granted a secret clearance in about 2004. He served in the Army on active duty from 1979-1992, and in the reserve from 2001-2007. He was married in 1984 and divorced in 2007. He was remarried in 2009 and divorced in 2018. He has two adult children. (Item 3)

Applicant's SCA shows that he has been consistently employed since 2008. In his Answer, he cited a number of factors that have impacted his finances, including: low-paying work; his ex-wife's refusal to get conventional unemployment; failure of a part-time startup business; and reduced earnings when he left the military in 1992. Some of these issues caused him to file Chapter 13 Bankruptcy in 1995 and 2000. (Item 2, 3)

Applicant stated that his wife obtained information online that American citizens should not pay taxes. He claims that he disagreed with her, but she refused to file. He stated that he had always paid his taxes on time without any issues. He asserted that after they got divorced, he went to a tax preparation service, and found out that he could have filed his tax returns "single" during the years his wife refused to file. He reported that he has agreements to pay his outstanding Federal and state taxes, and that he makes automatic payments monthly. However, he did not provide sufficient documentation of these agreements or payments. (Item 2, 3)

Applicant's IRS tax account records show that his 2014, 2015, and 2016 Federal income tax returns were not filed until 2018. His 2017 return was filed on time. As of September 2020, he owed the IRS: \$14,876 for 2014; \$13,046 for 2015; and \$14,147 for 2016. His records show that he made some payments on his 2015 taxes from February 2020 to September 2020. The records also showed that he had an installment agreement for his 2017 taxes and made \$110 payments from December 2018 to February 2020. (Item 8)

The record includes a one-page document from an unknown website, on an unknown date, showing that Applicant was choosing a payment amount of \$690 monthly, but no payment agreement was provided. Another document titled payment

activity, shows seven \$690 payments towards his 2015 taxes, and nine payments for his 2017 taxes. No recent payments were documented. (Item 8)

An account summary from a state Department of Revenue shows a \$11,634 balance. Applicant wrote on this page that he pays \$283.64 monthly, but provided no other documentation. The record also shows state tax liens filed in 2018 for \$2,304 and \$804. The first lien was satisfied in September 2019. (Item 8, 9)

The U.S. Army Central Personnel Security Clearance Facility warned Applicant in 2002 that the retention of his security clearance was contingent on him avoiding future financial delinquencies. His 2011 SCA and credit report shows at that time he owed approximately \$18,000 in child support, had a \$738 tax lien, and defaulted on a \$4,400 auto loan. (Item 4, 7, 14)

The SOR alleges three charged-off debts totaling \$34,567; two Chapter 13 Bankruptcies filed five years apart; failure to timely file three years of Federal and state income tax returns; approximately \$42,000 in unpaid Federal tax debt; and approximately \$11,000 in unpaid state tax debt. The status of the debts follows:

SOR ¶ 1.a is credit-card account that was charged-off in 2016 for \$8,642. Applicant stated that he became unemployed and unable to pay the account. He claims that he contacted the creditor to negotiate a payment plan, but provided no documentation of those efforts. He stated that he forgot about the debt once he stopped receiving notices in the mail. (Item 2, 5, 6, 13)

SOR ¶ 1.b is a credit-card account that was charged-off in 2016 for \$7,032. In his Answer, Applicant stated that this debt was for a loan for his wife to start an online travel business, which failed. In his background interview, he stated that this was a credit card that he was unable to pay when he lost his job. He claims that he contacted the creditor to negotiate a payment plan, but provided no documentation of those efforts. He admits that he ignored notices in the mail about this debt, since he cannot pay it. (Item 2, 5, 6, 13)

SOR ¶ 1.c is an auto loan that was charged-off in 2017 for \$18,893. Applicant stated that he purchased a van to start a part-time delivery service after getting laid off from his job. The delivery service was not successful, and he defaulted on the loan after six months. He stated that he returned the vehicle to the dealership, and was charged for the full cost of the vehicle. (Item 2, 5, 6, 13)

SOR ¶ 1.d is a Chapter 13 Bankruptcy filed by Applicant in 1995, which was discharged in July 2000. He stated that after leaving active duty with the Army, his pay dramatically changed, and he could no longer afford his expenses. (Item 2)

SOR ¶ 1.e is a Chapter 13 Bankruptcy filed by Applicant in December 2000, which was discharged in April 2006. He stated his job situation had not changed after leaving active duty, and he was still working a low-paying job. He reported that his wife was not working, and he did not want to let his debts go into default. (Item 2)

SOR ¶¶ 1.f and 1.h allege failure to timely Federal and state income tax returns for tax years 2014–2016. Applicant stated that all his returns are now filed. (Item 2, 3, 13)

SOR ¶ 1.g is a \$42,000 tax debt for tax years 2014-2016. Applicant stated that he makes monthly payments which are automatically debited from his bank account. His tax records show some payments up to September 2020. However, he has not provided information showing a more recent track record of payments, or documentation of an installment agreement for his Federal tax debt. (Item 2, 8, 13)

SOR ¶ 1.i is a \$11,000 state tax debt for tax years 2014-2016. Applicant asserted that he makes monthly payments which are automatically debited from his bank account. However, he failed to provide documentation of payments, or an installment agreement to repay this debt. (Item 2, 8, 13)

Applicant did not submit any documentation concerning his current financial situation, such as his monthly income and expenses, his assets, or whether he follows a budget. In 2020, he reported that he has about \$3,000 of discretionary funds at the end of each month. No evidence was provided that Applicant has received credit counseling. (Item 13)

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.

Timely filing of income tax returns and paying taxes owed is a basic duty for U.S. citizens, and is required by law. The Appeal Board has held that “a security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly, failure to honor other obligations to the Government has a direct bearing on an Applicant’s reliability, trustworthiness, and ability to protect classified

information as reflected in the Guideline F concerns that were alleged.” (ISCR Case No. 14-03358 at 2 (App. Bd. Oct. 9, 2015)).

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;
- (b) 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.

The SOR allegations are established by Applicant’s admissions, tax records, and the credit reports in the record. AG ¶¶ 19(a) ,19(c), and 19(f) apply.

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;
- (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 did not provide sufficient evidence to establish that AG ¶ 20(a) should apply. There is a record of financial problems and delinquencies going back to the mid-1990’s. He did not provide sufficient documentation showing that his three charged-off debts, and his Federal and state tax debts are currently being paid, or have been resolved. He provided no documentation of his current financial situation, evidence which might establish his ability to address his debts responsibly. His failures to pay his charged-off debts and tax debts are recent, not isolated, and are ongoing and unresolved. This continues to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

While Applicant claims that loss of employment caused him to default on some of his debts, he did not report any periods of unemployment on his SCA. While his wife refused to file tax returns with him, he did not get professional advice about how to meet his legal obligations for his taxes until years after they were due. This failure was not due to reasons beyond his control. There is insufficient evidence in the record to show that he undertook responsible action to make payment arrangements for them. AG ¶ 20(b) does not apply.

Similarly, Applicant did not provide sufficient evidence to show that he is currently paying his debts, or has current payment arrangements in place. AG ¶ 20(d) partially applies because he provided evidence that some payments were made towards his 2015 taxes. However, he did not provide sufficient documentation to show that he is currently resolving the rest of his tax debt or charged-off debt. AG ¶ 20(d) does not fully apply.

AG ¶ 20(g) partially applies because Applicant filed his 2014-2016 returns in 2018, and made some payments towards his 2015 taxes. However, he filed his returns years late, and still has a considerable amount of delinquent state and Federal tax debt. While he claims that he has made recent payments and has a payment plan, he did not provide sufficient documentation of these efforts. AG ¶¶ 20(g) does 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 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. Applicant did not provide sufficient evidence to mitigate the security concerns arising out of Applicant's charged-

off debts, failure to timely file Federal and state income tax returns, and pay Federal and state tax debt under Guideline F.

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.i:	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.

Ross D. Hyams
Administrative Judge