



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 21-02332
)	
Applicant for Security Clearance)	

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
 For Applicant: *Pro se*
 09/15/2022

Decision

MARINE, Gina L., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on November 17, 2020. On December 17, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The CAF acted 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on a date not indicated in the record (Answer), and requested a decision based on the written record in lieu of a hearing. On March 8, 2022, the Government sent Applicant a file of relevant material (FORM), including evidentiary documents identified as Items 1 through 5. He was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government's evidence. He received the FORM on March 23, 2022,

but did not respond to the FORM or object to the Government's evidence. The case was assigned to me on June 16, 2022.

Evidentiary Matters

Items 1 and 2 contain the pleadings in the case. Items 3 through 5 are admitted into evidence. Applicant's Answer included documents that are admitted into evidence as Applicant Exhibit (AE) A. Although Item 4 was not authenticated as required by Directive ¶ E3.1.20, I conclude that Applicant waived any objection to Item 4. The Government included in the FORM a prominent notice advising Applicant of his right to object to the admissibility of Item 4 on the ground that it was not authenticated. Applicant was also notified that if he did not raise an objection to Item 4 in his response to the FORM, or if he did not respond to the FORM, he could be considered to have waived any such objection, and that Item 4 could be considered as evidence in his case.

Findings of Fact

Applicant, age 54, is married with two adult children. He received his high school diploma in 1987. He attended an online college from 2006 through 2008, without earning a degree. He honorably served the U.S. Air Force from 1990 through 1999. He has been employed as a technical services analyst by a defense contractor since 2019. He previously maintained a security clearance during his military service. (Item 3; Item 4 at 8; Item 5 at 13)

Applicant failed to timely file his federal income tax returns for tax years (TY) 2014, 2015, and 2016 (as alleged in SOR ¶ 1.a) and also for TY 2017 through 2019. I will consider the unalleged TY only to evaluate mitigation and the whole person. He did not request a filing extension in any of those TY. He filed his 2014, 2015, and 2017 returns on May 1, 2020; his 2018 and 2019 returns on October 20, 2020; and his 2016 return on June 15, 2021. He made a \$2,285 payment with his 2014 return; and a \$1,683 payment with his 2017 return. The IRS returned the 2016 return to Applicant on September 28, 2021 because it was missing a signature. He returned the signed 2016 return to the IRS on a date not indicated in the record sometime before he submitted the Answer. (AE A at 1, 3, 4, 6, and 7; Item 2; Item 5 at 22-24)

Applicant failed to timely pay his federal income taxes for TY 2017 through 2019 (as alleged in SOR ¶ 1.b) and also for TY 2014. He owed \$1,826 for TY 2014 as of January 2022. He owed a total of \$3,312 for TY 2017 through 2019 as of April 2021. I will consider the 2014 debt only to evaluate mitigation and the whole person. A January 2022 IRS account transcript reflected that an installment agreement to repay the 2014 debt was established by the IRS in November 2021. The terms of that agreement were not indicated in the transcript. In the Answer, Applicant admitted SOR ¶ 1.b and stated: "I admit that I am in debt to the Federal Government and the balance, in full, has yet to be paid." He also asserted that he was paying his federal tax debt pursuant to an installment agreement approved by the IRS via \$200 monthly payments on the 15th of each month. Because the 2014 debt was not alleged, it was unclear whether his reference to Federal Government "debt" included that TY. The document he provided with the Answer reflected

the \$200 per month agreement, but did not reference any tax years or the date when the installment agreement was established. Applicant did not proffer documents corroborating any payments made pursuant to IRS besides those he submitted with his returns. (AE A at 1-2, 4; Item 5 at 22-24)

Applicant also failed to timely file his state income tax returns and to pay his state income taxes for TY 2014 through 2019. As of April 2021, he owed a total of \$13,879 for TY 2014 through 2019, which the state agreed he could pay via \$1,164 monthly payments to begin April 8, 2021. Although the filing dates were not equivocally stated in the record, he apparently filed his TY 2014 through 2019 state returns sometime between May 2020 and April 2021. Because the SOR alleged only the state tax debt owed (SOR ¶ 1.c), I will consider his failure to timely file state returns only to evaluate mitigation and the whole person. In a personal financial statement Applicant completed in June 2021, he referenced a \$268 monthly payment for state taxes, but did not provide any proof of those payments. In the Answer, Applicant admitted SOR ¶ 1.c and asserted that he was paying his state tax debt pursuant to an installment agreement approved by the state. The document he provided with the Answer to corroborate that agreement reflected that he made one \$320 payment on November 19, 2021, but did not reference any tax years or the terms of the agreement. Applicant did not proffer documents corroborating any other payments made pursuant to the agreement. (Item 3 at 39-41; Item 4 at 2-3; Item 5 at 15, 20-21)

During Applicant's April 2020 subject interview (SI), he attributed his delay in filing TY 2014 through 2017 returns to traveling so frequently for work and what he described as miscommunication with his wife. He explained that he never explicitly asked his wife whether the tax returns had been filed, but just assumed that they had. He maintained that he simply forgot to file his TY 2018 returns and had not yet filed his TY 2019 returns due to COVID-19. I took administrative notice of the fact that the IRS extended the deadline for TY 2019 returns to July 15, 2020. (Item 4 at 2-3, 8)

During the SI, Applicant acknowledged that he was not good at filing and maintaining paperwork and had never made his finances, including taxes, a priority in his life. He claimed that he was not aware that his wife had not filed their TY 2014 through 2017 returns until sometime in 2018, when he was going through years of unopened mail and noticed a bunch of employee withholding (W-4) forms. He explained that piles and piles of unopened mail had accumulated at his home while he was travelling for work between 2015 and 2018. Although his wife did check the mail during that time, she never opened any mail addressed to Applicant or any mail involving taxes or employee withholding forms. (Item 4 at 3-4)

During the SI, Applicant acknowledged that he could have been more proactive in dealing with his mail and other important information since he only traveled for work two weeks of every month. He decided to finally go through his mail in 2018 because he realized that he was getting older and wanted to get his financial life in order in preparation for retirement. He planned to avoid future filing delays by asking his son-in-law (who had recently earned a finance degree) to handle his tax filings every year. He expressed his

regret for assuming that his taxes were taken care of by his wife and promised to work hard to avoid that miscommunication in the future. (Item 4 at 4-5)

In Applicant's November 2020 SCA, he provided the following explanation for why he failed to timely file his federal and state returns for TY 2014 through 2017: "working as [sic] contractor moving from contract to contract, I thought my wife had filed them and she thought I filed them." He did not provide a reason for TY 2018 and 2019. The information he provided in the SCA about the status of his return filings and tax payments was confusing, which suggested that he apparently either partially filled out or completed another SCA prior to November 2020 that was not included in the record (particularly since he was interviewed in April 2020). Nevertheless, Applicant clearly articulated that he had been working with the state tax authority to resolve his state tax issues and sought out professional financial and legal advice to help him resolve his federal tax issues. He indicated that his delinquent state and federal tax returns had either been filed or were in the process of being filed, and that he intended to remediate any associated delinquent taxes or penalties. (Item 3 at 39-41)

In Applicant's June 2021 response to interrogatories propounded by the CAF, he attributed the miscommunication with his wife about their TY 2014 through 2017 taxes to the fact that she worked at night so they did not talk much. He declared that the "USA is [his] beloved home," and that he was trying to correct his mistakes and doing his best to fix the concerns identified by the CAF. (Item 5 at 13-14)

Policies

"[N]o one has a 'right' to a security clearance." (*Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." (*Egan* at 527). The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." (EO 10865 § 2)

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” (EO 10865 § 7). Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. (*Egan*, 484 U.S. at 531). “Substantial evidence” is “more than a scintilla but less than a preponderance.” (*See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994)). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. (ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016)). Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. (Directive ¶ E3.1.15). An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002)). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” (*Egan*, 484 U.S. at 531; AG ¶ 2(b))

Analysis

Guideline F: Financial Considerations

The general concern under this guideline is set out in AG ¶ 18, as follows:

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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a

person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. (ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012))

The record evidence establishes the following disqualifying conditions under this guideline: 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).

Having considered all of the factors set forth in AG ¶ 20 that could mitigate the concern under this guideline, I find the following relevant:

(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 failed to proffer a justifiable excuse for failing to file his returns over such an extended period. While his travel schedule, miscommunication with his wife, and COVID-19 contributed to the filing

delays, the record suggests that procrastination and avoidance surrounding his tax obligations played a more significant role. He is credited with eventually filing his TY 2014 through 2019 returns and making arrangements to resolve his tax debts before the SOR was issued. However, he failed to establish a meaningful track record of regular and timely payments to the IRS and the state pursuant to those payment arrangements. Moreover, he demonstrated poor judgment and a willingness to place his own self-interest above his legal obligations, which casts doubt as to whether he may also act similarly in the context of his security obligations. AG ¶¶ 20(a), (b), (d), and (g) are not established. Accordingly, I cannot conclude that Applicant has mitigated the Guideline F concerns at this time. He may be able to overcome these security concerns at some future date should he establish a sufficient pattern of compliance with his tax obligations.

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the security concerns raised by his delinquent tax debts and failure to timely file his income tax returns. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the interests of national security to grant him eligibility for access to classified information.

Formal Findings

Formal findings 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.c:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security to grant or continue Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine
Administrative Judge