



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



In the matter of:)
)
) ISCR Case No. 20-02776
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

10/03/2022

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 February 20, 2021, the Department of Defense 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; 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.

On July 22, 2021, Applicant answered the SOR, and he requested a hearing before an administrative judge. The case was assigned to me on June 9, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 15, 2022, scheduling the hearing for July 14, 2022. On July 7, 2022, Applicant requested a

continuance, which was granted. DOHA issued an amended notice of hearing on July 28, 2022, scheduling the hearing for September 14, 2022. I convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 6. Applicant offered Applicant Exhibits (AE) A through Q. There were no objections and the exhibits were admitted into evidence. Hearing Exhibit I is the email continuance request and response. The record was held open until September 28, 2022, to allow Applicant to submit additional documents. He provided AE R through W that were admitted without objection, and the record closed. DOHA received the hearing transcript on September 22, 2022.

Procedural Matters

The Government moved to amend the SOR to conform to testimony during the hearing, to add the following allegations:

1.j: You are indebted to the Federal Government for delinquent taxes in the amount of approximately \$9,500 for tax year 2017. As of the date of the hearing, the taxes remain unpaid.

1.k: You are indebted to the State of [X] for delinquent taxes in the approximate amount of \$700 for tax year 2017. As of the date of the hearing, the taxes remain unpaid.

There was no objection and the motion was granted. (Tr. 80-82)

Findings of Fact

Applicant admitted the allegations in the SOR ¶¶ 1.a through 1.h, and 1.j and 1.k. He denied SOR ¶ 1.i. Applicant's admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 39 years old. He earned a bachelor's degree in 2006. He married in 2012 and divorced in 2017. He has a child, age eight, from the marriage. He remarried in 2019 and has an infant child and a six-year-old stepchild. Applicant began his current employment in August 2022 and his annual salary is \$120,000. At his previous job, from February 2022 to August 2022, his annual salary was \$116,000. From March 2020 to February 2022 he earned \$110,000 annually and from November 2017 to February 2020 he earned \$95,000 annually. (Transcript (Tr.) 15-22, 79-80; GE 1)

Applicant partially attributes his financial difficulties to his May 2017 divorce. He received the marital house and was required to sell it as part of the divorce settlement, splitting the profit, if there was any. In addition, he initially was required to pay \$1,040 a month for child support, which he found difficult to pay. The child support payment was modified in May 2020, and he now pays \$400 a month. The divorce decree required him to file his 2017 income tax return as single. (Tr. 16-17; AE A, L)

Applicant met his second wife in 2018 and moved in with her in June 2018. He still owned the marital house from his divorce and was responsible for the mortgage payments and other monthly expenses associated with it. He stated his financial problems were beyond his control because he had two mortgages to pay. He was not legally responsible for paying her mortgage. He testified that because he was living with her, he felt obligated to help pay her mortgage. From June 2018, he paid her mortgage of approximately \$800, along with his mortgage payment of \$1,200. He sold his marital residence in May 2019 and there was a \$4,000 deficiency. He borrowed money from his father to pay the deficiency. He repaid him in September 2019. (Tr. 22-28; AE C, G)

Applicant's wife was on leave through the Family & Medical Leave Act (FMLA) from October 2020 to January 2021. Applicant testified that she earned partial pay during this period. She later was on eight weeks leave from her job due to pregnancy from June to August 2022. Applicant testified that she earned 60% of her income during this time. She went back to work recently. Her annual income is approximately \$55,000. (Tr. 20-22; AE E, F)

Applicant purchased a motorcycle after his divorce. When he moved in with his second wife, he was unable to make the \$150 monthly payments on the loan (SOR ¶ 1.e-\$8,034). The account went into collection status, and Applicant resolved the debt in October 2021 with a lump-sum payment. He then sold the motorcycle for \$3,200 after paying the loan. Applicant provided documentary proof the debt is resolved. (Tr. 28-32, 66-67; AE O)

The debts alleged in SOR ¶¶ 1.f (\$5,319), 1.g (\$26,097) and 1.h (\$4,827) are charged-off credit card debts. Applicant had difficulty paying these debts when he started helping his wife with her mortgage payments. He contacted the creditor in SOR ¶ 1.g and requested it lower the interest rate. He testified that he did not follow up with the creditor because he then contacted a debt consolidation company to assist him in resolving his debts and was advised not to contact his creditors and to stop making payments. He provided a copy of the contract that he signed in November 2017, which indicated his monthly payments on the \$42,636 amount of unsecured debt was \$638 a month. He said he made about six to nine months of payments, but then stopped. He testified that he likely had missed monthly payments to these creditors before the advice from the debt consolidation company. Applicant did not provide corroborating documents of his payments to the debt consolidation company. He did not contact the other creditors. He has not taken any other action on these debts to resolve them since then. These debts have been delinquent since at least May 2019. Applicant testified that he paid the debt in SOR ¶ 1.i (\$261). He did not provide documentary evidence this debt is resolved. (Tr. 45-46, 50-54, 68-70; GE 2, 3, 4, 5, 6, AE U)

Applicant's wife has a car note for a 2017 vehicle. He recently purchased a 2020 vehicle because they needed a bigger car that could hold three car seats. He testified that he is unfamiliar with his wife's finances. (Tr. 46-49, 74-79; GE 6)

Applicant's wife sold her house in September 2021, and she and Applicant purchased a new house and made a cash down payment of \$30,000 to \$35,000. She made a profit of about \$45,000 on the house. They used the remainder of the profit for home improvements. He testified that after paying for the home improvements, he did not have any extra money to pay his other delinquent debts, including his tax debt. Their current mortgage payment is approximately \$2,000. (Tr. 71-74; GE 6)

Applicant failed to timely file his 2017 and 2018 federal and state income tax returns. He was indebted to the IRS for delinquent taxes in the approximate amount of \$2,738 for tax year 2016 and \$655 for tax year 2019.

Applicant was interviewed by a government investigator in August 2019. He told the investigator that he was financially unable to pay his 2016 federal income taxes, but would do so by the end of 2020. He discussed his failure to timely file his 2017 and 2018 federal income tax returns. He said he had an appointment with a tax professional in September 2019 to assist him in filing both his state and federal tax returns and any taxes owed would be paid in full by the end of 2020. Applicant also acknowledged the delinquent accounts alleged in the SOR. He told the investigator that he had not made an effort to pay them, but understood he was obligated to do so. He intended to contact the creditors to negotiate payment plans and he intended to eventually pay the balances owed. (GE 2)

Applicant testified that he used the proceeds from the sale of his motorcycle (\$3,200) to pay his tax debt. He provided an IRS document that showed a history of payments. It reported that in April 2020 a state income tax levy of \$641 was paid for tax year 2016; in January 2021 a \$656 payment was applied to a federal tax debt for tax year 2019; in September 2021 a \$405 payment was applied to a federal tax debt for tax year 2020, and \$2,748 was applied to a federal tax debt for tax year 2016. (Tr. 32, 42-45, 64-65; AE K)

Applicant testified that he failed to timely file his 2017 and 2018 federal and state tax returns because after his divorce he let it slip, and he should have taken care of it. He delayed further because he said the cost of having the returns completed by a tax service was a hindrance. He said he could not afford the \$500 it would cost. He said his wife was pregnant and not working. (Tr. 32-37; AE D, G, H, I, J)

Applicant testified that he filed his 2017 and 2018 federal and state income tax returns the last week of August 2022, shortly before his hearing. He provided the first page of the state tax form for each year, but it does not show that he signed the documents and the date they were submitted. He said he could not file electronically. The 2017 state form shows he owes \$962 and the 2018 state form shows he was due a \$702 refund. He testified he has not paid what he owes. (Tr. 33-45, 64; AE D, G, H, I, J)

Applicant also provided the first page of his 2017 and two pages of his 2018 IRS 1040 forms. He did not provide evidence that he signed the documents, and the date he submitted them to the IRS. The 2018 federal form shows he is owed a \$523 refund. He did not provide the same page for his 2017 federal tax form, which would show that he

was due a refund or had a tax debt. Applicant testified that he owes \$9,500 for federal income tax for tax year 2017. He said that he will likely not receive the 2018 federal income tax refund because it is beyond the three-year period to claim it. He said that he filed his 2019 federal income tax return and owed taxes, but was unable to pay it until January 2021. He filed his 2020 federal income tax return, and he received a refund, but could not recall the amount. He filed his 2021 federal income tax return and owes \$1,484 that has not been paid. He has not contacted the IRS to make payment arrangements for any of his delinquent taxes.¹

Post-hearing, Applicant provided an email stating he was unable to obtain verification from the IRS website that his 2017 and 2018 tax returns have been received. The response email stated that the IRS had notified Applicant by mail that his 2017 tax return should have been filed and was not. It said it could take up to six weeks to process returns and that he should include with his return any payment due and if he could not pay the full amount to pay what he could and apply for a payment plan. Applicant did not provide evidence post-hearing that he has made any payments to the IRS. (Tr. 33-45, 64-65; AE G, H, R, T, V, W)

Applicant testified that his financial problems are due to extenuating circumstances. They are his 2017 divorce, child support, his wife not earning her full salary while on medical leave, a new baby, and assuming her mortgage payments and her other financial responsibilities. He testified that he and his wife are working through the Dave Ramsey financial program, which they started in the summer of 2021, but because his wife was out of work they have not been able to pay much. He said he has a good plan moving forward. He said his failure to file his income tax returns was due to his divorce. (Tr. 46)

The SOR allegations are corroborated by Applicant's testimony, admissions in his answer, his SCA, responses to Interrogatories, his personal subject interview, and credit reports from August 2019, January 2021, February 2021, and June 2022. (GE 1, 2, 3, 4, 5, 6)

Character witnesses testified on Applicant's behalf. His father testified that he is aware of Applicant's financial difficulties due to his wife being out of work. He believes his son has always made an effort to pay his bills. His son has always acted responsibly and he is confident he will pay his creditors. The circumstances that created his son's financial problems were beyond his control and given enough time he will resolve his debts. (Tr. 58-59)

Applicant's father-in-law testified on his behalf. He has known Applicant since 2018. He described Applicant as a supportive husband and father and a stable provider. He and Applicant coach a youth soccer team together. His daughter has had some health

¹ Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes, but may be considered when making a credibility determination, in the application of mitigating conditions, and in the whole-person analysis.

challenges. He is not aware of Applicant's financial issues, but he is a hard-worker and provides for his family. (Tr. 59-61)

Applicant provided character letters from people he worked with for 6 to 12 months. He is described as a person with high moral and ethical standards. He is considered exceptional, responsible, loyal, and dependable. He is a family man who provided a new home for his family and has a good attitude and work ethic. (Tr. 54-55; AE M, N, Q)

Applicant testified that he is not an insider threat. He is a family man who got into some financial difficulties. Post-hearing, Applicant provided a statement that he realizes holding a security clearance is a privilege and he takes that responsibility seriously. He has never done anything that would be perceived as a threat to national security. He is a patriot and would not do anything to harm the country. He made some financial choices and has personal debt, but he cannot be blackmailed. He has not received pressure from his creditors as they have written-off his debt. He reaffirmed his commitment to protect classified information. (AE S)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the 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 are potentially applicable:

- (a) inability to satisfy debts;

(b) unwillingness to satisfy debts regardless of the ability to do so;

(c) 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.

Applicant failed to timely file his 2017 and 2018 federal income tax returns. He failed to timely pay his 2016, 2017 and 2019 federal income taxes. He failed to timely file his 2017 and 2018 state income tax returns. Applicant has delinquent debts that began accumulating in 2018 that he has not resolved. There is sufficient evidence to support the application of the above disqualifying conditions.

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;

(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;

(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 acknowledged that he failed to timely file his 2017 and 2018 federal and state income tax returns. He was put on notice with the SOR that his delinquent tax issues were a security concern, and he failed to provide corroborating documents to prove that they have been filed. He testified that he owes \$9,500 for his 2017 federal taxes and has not paid them or made arrangements with the IRS to pay them. AG ¶ 20(g) does not apply. The evidence Applicant provided shows that he paid his delinquent 2016 and 2019

taxes in September 2021, after receipt of the SOR. AG ¶ 20(g) applies to these tax years, but it does not fully mitigate the security concerns raised by his failure to comply with the tax rules.

Applicant's explanation for his failure to timely file was that after his divorce he let them slip and then later he did not have the money to hire a tax preparer to complete his returns. He attributes his other financial delinquencies to taking over his wife's mortgage when he moved in with her along with paying his own mortgage and the amount of his child support. The child support amount was beyond his control. Applicant voluntarily took over his wife's mortgage, knowing he had his own mortgage and other expenses for which he was responsible. That was within his control. Later his wife had medical issues and was only receiving part of her salary, which was beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant has not presented sufficient evidence to conclude he acted responsibly. His child support was reduced in May 2020 from \$1,040 to \$400. He and his wife used the profit from the sale of her house to purchase a new house before addressing Applicant's financial issues. He did not provide evidence he has made payment arrangements with many of his creditors. AG ¶ 20(b) has minimal application.

Applicant paid the debt in SOR ¶ 1.e and it is resolved. AG ¶ 20(d) applies to this debt. He testified that he attempted to use a debt consolidation company to resolve his debts, but only participated for six to nine months before stopping. He contacted one creditor, but has not taken any other action to resolve the debts in SOR ¶¶ 1.f, 1.g and 1.h. He said he paid the creditor in SOR ¶ 1.i, but did not provide documentary evidence. Applicant stated he is participating in the Dave Ramsey financial management plan, but did not provide evidence as to what actions he is taking. He did not provide evidence of debts he may have paid or a written budget or plan. AG ¶ 20(c) has minimal application because there are not clear indications his financial problems are being resolved or are under control.

Applicant failed to timely file his federal and state income tax returns for two years. He still owes federal income tax and other debts that have not been addressed. His debts are recent. He made the financial decision to pay his wife's mortgage and forego his other financial responsibilities. His conduct raises issues about his reliability, trustworthiness, and good judgment. Under the circumstances I cannot conclude it is unlikely to recur. AG ¶ 20(a) 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 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 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant neglected to file his 2017 and 2018 federal and state income taxes and also failed to pay his federal income taxes for 2017. Although, he eventually paid his 2016 and 2019 federal income taxes, it was not until after he received the SOR. The DOHA Appeal Board has held that:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with these things is essential for protecting classified information. ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Someone who fails repeatedly to fulfill his or her legal obligations 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. 14-01894 at 5 (App. Bd. August 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).²

Applicant's history of non-compliance with a fundamental legal obligation to timely file and pay his federal and state income tax returns and taxes pay them raises serious concerns. His failure to address his other delinquent debts indicates he has an unreliable financial track record. 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 arising 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:

² ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraphs 1.a-1.d: Against Applicant

Subparagraph 1.e: For Applicant

Subparagraphs 1.f-1.k: 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge