



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



In the matter of:)
)
) ISCR Case No. 21-00843
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*
10/26/2022

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns raised by his bankruptcies, federal tax issues, and other delinquent debts. National security eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on October 16, 2018. On October 15, 2020, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on July 9, 2021, and elected to have a hearing. (Answer) The case was assigned to me on January 27, 2022. On March 8, 2022, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for March 30, 2022.

I convened the hearing as scheduled via video teleconference on Microsoft Teams. I marked the March 3, 2022 case management order as HE I; Department Counsel's December 16, 2021 discovery letter as HE II; and Department Counsel's exhibit list as HE III. Government Exhibits (GE) 1 through 13 and Applicant Exhibits (AE) A and B were admitted without objection, and Applicant testified. DOHA received the transcript (Tr.) on April 6, 2022. At the hearing, per Applicant's request, I held the record open until April 20, 2022, to allow him to submit additional documentation. He timely submitted

documentation that I marked as AE C and D (which is a duplicate of AE A), which I admitted without objection, and the record closed.

Findings of Fact

Applicant is 48 years old and has never been married. He has a 27-year-old son, a 21-year-old daughter, and a 17-year-old son. He has been living with his partner since April 2019. He graduated from high school in 1992. He earned an associate's degree in 2021, and he is currently working toward a bachelor's degree in cybersecurity. He has worked for his current employer as a munition mechanic since July 2020. This is his first security clearance application. (GE 1; GE 2; AE B; Tr. 20-25, 60-61)

The SOR alleged Applicant filed for Chapter 7 bankruptcy protection in March 2005 (SOR ¶ 1.a) and April 2015 (SOR ¶ 1.b), and his debts were discharged in June 2005 and July 2015, respectively. Additionally, he owes the Internal Revenue Service (IRS) \$8,364 for tax year (TY) 2013 (SOR ¶ 1.c), \$5,576 for TY 2014 (SOR ¶ 1.d), and \$3,762 for TY 2015 (SOR ¶ 1.e). He admitted these allegations. He denied that he owes municipal income taxes in the amount of \$7,878 (SOR ¶ 1.f). He admitted two of the additional SOR debts, totaling \$1,710 (SOR ¶¶ 1.g and 1.i) and denied three debts, totaling \$980 (SOR ¶¶ 1.h, 1.j, and 1.k). (Answer)

Applicant attributes his financial issues to the early 2000s, when he fell behind on paying child support for his oldest two children to their mothers. He and his oldest son's mother had a legal agreement that each of them would claim their son as a dependent every other year; however, she consistently received her W-2 before him and claimed their son on the years Applicant was entitled to claim him. His federal tax debt started to accrue as a result, and he "never rebounded" from this period. At an unrecalled date, he contacted the IRS, and they put him in a non-collectible status. Additionally, he struggled to pay his mortgage and other bills, and, as a result, he filed for Chapter 7 bankruptcy protection in 2005. His liabilities totaled \$93,066, and included \$4,000 of child support payments, \$500 of tax debt, and almost \$8,500 in other unsecured debt. He has had no periods of unemployment in the past five years. (GE 2 at 6; GE 9; Tr. 19-20, 25-31, 60, 63)

In Applicant's October 2020 SCA, he disclosed his 2015 Chapter 7 bankruptcy. Additionally, he disclosed an unalleged Chapter 13 bankruptcy petition that he filed in March 2018. He reported no additional bankruptcies, debts, or tax issues. (GE 1; Tr. 66)

In December 2020, Applicant was interviewed by a Government investigator. He told the investigator that he filed for Chapter 7 bankruptcy protection in 2015 due to falling behind on his mortgage and other debts when he lost his job for a few months. His total liabilities were \$60,000, and included over \$33,000 in federal and state income tax debt. He also filed for Chapter 13 bankruptcy protection in 2018, because he was overwhelmed by his child support obligations and other bills. His liabilities were \$30,000, and he had \$25,000 in tax debt. He made two or three bankruptcy payments, but stopped making payments because he could not afford them, and the bankruptcy was dismissed in June

2019. Applicant discussed SOR ¶¶ 1.g through 1.k with the investigator. (GE 2 at 6-9; GE 3; GE 7; Tr. 63)

Applicant responded to DOHA interrogatories in April 2021, and adopted the statement referenced above. He also provided IRS account statements for TY 2011 through 2019. According to these statements:

TY 2011: filed late in October 2012	Balance: \$0 (resolved 6/24/2019)
TY 2012: Filed late in September 2014	Balance: \$0 (resolved 5/4/2020)
TY 2013: Filed late in February 2015	Balance: \$8,259 (SOR ¶ 1.c)
TY 2014: Filed late in June 2015	Balance: \$5,506 (SOR ¶ 1.d)
TY 2015: (W-2)	
TY 2016: Filed late in May 2017	Balance: \$3,644 (SOR ¶ 1.e)
TY 2017: Filed April 2018	Balance: \$0
TY 2018: Filed late in June 2019	Balance: \$0
TY 2019: Filed in May 2020	Balance: \$0 (GE 2; Tr. 28-30)

At the hearing, Applicant admitted he failed to file his federal income tax returns in a timely manner for several years. In addition to his son's mother claiming their son on her returns for years when Applicant was entitled to claim their son, which affected Applicant's taxes, he also failed to have an adequate amount withheld from his paychecks. This also contributed to his debt to the IRS. He testified that for several years, he was in non-collectible status, however, since approximately 2017, he has been in a payment agreement with the IRS, and is paying \$278 monthly directly out of his checking account. (GE 1; Tr. 20, 28-38)

According to Applicant, his outstanding balance with the IRS is approximately \$16,000. The documents in the record and the amounts alleged in SOR ¶¶ 1.c through 1.e, reflect that the balances for some of the TY have decreased. The IRS tax transcripts reflect that in the past, Applicant established multiple payment agreements, but they were terminated due to his failure to pay them. Applicant did not provide proof of his payments, when the payments started, or the number of payments he has made. The IRS tax transcripts reflect credits for overpayment were transferred from TY 2016 to 2019 to TY 2011 to 2013, but no active payments were made to Applicant. (For TY 2016, after an overpayment was transferred to TY 2011, additional taxes, interests, and fees were assessed against Applicant.) The record was left open, in part, to allow him to provide documentation regarding his payments to the IRS. (GE 2; Tr. 20, 28-38)

Department Counsel produced evidence that Applicant filed Chapter 13 bankruptcy protection in 2001, 2002, 2003, and 2018. These bankruptcies were dismissed in March 2003, August 2003, August 2004, July 2018, respectively. Applicant testified that he did file these bankruptcy petitions, and they were not alleged in the SOR. I will not consider them as disqualifying conduct, but may consider them in determining if the mitigating conditions are applicable and in my whole-person analysis. (GE 4; GE 5; GE 10 – GE 12; Tr. 26-27, 39-40)

None of the debts listed below appear in Applicant's March 2022 credit report, with the exception of SOR ¶ 1.k. (AE A)

SOR ¶ 1.f (City taxes - \$7,878) Applicant testified that he was unaware that these local taxes were not being deducted from his paycheck from when he lived in State A. He became aware of this debt when he moved from the area in 2018. When he learned of the debt, he calculated how much he believed he owed, and he believes the balance should be approximately \$3,000. He filed his taxes for the relevant tax year(s), 2015 or 2016, and the city did not access this tax until years later. According to Applicant, the statute of limitations is three years. He intends to hire an attorney to represent him in disputing this debt. Applicant resolved this debt. (Answer; Tr. 29-43)

SOR ¶ 1.g (Credit card debt - \$1,510) Applicant admitted this debt in his answer to the SOR, but testified that he believed this debt was included in his 2005 Chapter 7 bankruptcy filing. The record was left open to allow him to provide documentation to support his claim; however, he did not provide records regarding his bankruptcies. According to the credit reports in the record, this account was opened in May 2018, and was placed for collection in November 2020. Although, this debt does not appear in his most recent credit report, he has not demonstrated that he has resolved it. (GE 3 at 4; Tr. 44-45)

SOR ¶ 1.h (Energy debt - \$722) Applicant denied responsibility for this debt. In 2019, he moved out of the apartment he was renting and notified the utility company to terminate his service. He has disputed this debt with the credit agencies. Applicant resolved this debt. (Answer; GE 3 at 4; AE A; Tr. 46-51)

SOR ¶ 1.i (Consumer debt - \$200) Applicant admitted responsibility for this debt. He purchased a vacation in April 2018, for approximately \$1,600. He paid \$1,400, but was late making his final \$200 payment. When he went to make the last payment, the company would not accept a payment. He is able and willing to pay this debt. Applicant resolved this debt. (GE 3 at 4; Tr. 51-52)

SOR ¶ 1.j (Medical debt - \$56) Applicant did not recognize this debt and disputed it in 2021. Applicant resolved this debt. (Answer; GE 3 at 5; Tr. 52-54)

SOR ¶ 1.k (Consumer debt - \$202) Applicant denied responsibility for this debt, because it was included in his 2018 Chapter 13 bankruptcy. However, it still appears on his March 2022 credit report. (Answer; GE 3 at 5; AE A at 24; Tr. 54-56)

Applicant follows a written budget and has a net monthly remainder of \$1,679. He attended credit counseling in conjunction with his various bankruptcies and has attended an online-financial seminar for credit counseling on an undisclosed date. He earns \$29.86 an hour and routinely works ten hours of overtime a week, which is as much as he can work. He has between \$5,000 and \$6,000 in savings and over \$16,000 in his 401(k). His current bills and obligations are being paid in a timely manner. (AE C; Tr. 56-62)

As of the hearing date, Applicant's child support obligation for his youngest son is current, and it ends in February 2023. His support for his older children is satisfied and terminated. (Tr. 20, 24-25)

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 concern under Guideline F (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

Applicant's admissions and the documentary evidence establish the following disqualifying conditions under AG ¶ 19:

- (a) Inability to satisfy debts;
- (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.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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; 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's financial issues started due to child support obligations for his oldest two children and ongoing conflict with his son's mother regarding her violation of their child dependency agreement. These tax issues and ongoing financial problems led to him filing for Chapter 7 bankruptcy protection in 2005 and again in 2015, and his debts were discharged twice.

Applicant's tax issues are current, ongoing, and recent. He testified that he has been making payments toward his federal tax debt since 2017, and his balance is \$16,000. However, he failed to provide substantiating documentation of an installment agreement and payments toward the agreement, despite the record specifically being left open to allow him to do so. Additionally, the tax transcripts in GE 2 demonstrate that in the past he entered into multiple installment agreements with the IRS, and they were removed, demonstrating a pattern of noncompliance.

Given Applicant's lengthy history of financial issues, he has not demonstrated he has acted responsibly under the circumstances to address and resolve his tax issues and other financial obligations. Additionally, he provided limited proof of payment or resolution for several of his delinquent consumer debts. Mitigation under AG ¶¶ 20(a), 20(b), and 20(g) was not established.

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. Applicant failed to provide documentation to establish that he is paying his federal taxes. He has a lengthy history of financial issues, as demonstrated by his 2005 and 2015 Chapter 7 bankruptcy discharges. Overall, he has not demonstrated the actions of a responsible, reliable, and trustworthy person. I conclude he did not meet his burden of proof and persuasion. He failed to mitigate the financial considerations security concerns.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraphs 1.h – 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest of the United States to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

CAROLINE E. HEINTZELMAN
Administrative Judge