



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



In the matter of:)
)
) ISCR Case No. 21-00894
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

10/11/2022

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On July 6, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (Financial Considerations). Applicant responded to the SOR on July 15, 2021, and requested a hearing before an administrative judge. After a delay because of the COVID-19 pandemic, the case was assigned to me on June 28, 2022.

The hearing was convened as scheduled on September 14, 2022. Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. At Applicant's request, I left the record open until October 5, 2022, for Applicant to provide documentation to support his case. On September 21, 2022, Applicant submitted Applicant's Exhibits (AE) A through C, which were admitted in evidence without objection.

Findings of Fact

Applicant is a 50-year-old employee of a government contractor. He has worked for his current employer since about October 2019. He did not finish high school. He has been divorced and remarried. His first marriage lasted from 1994 until 2000. He was remarried in October 2021. He has two adult children. He financially supports one of these children, paying for her college tuition, housing, transportation, and insurance. (Transcript (Tr.) 16-20; GE 1)

Applicant has a history of financial problems, including eight years of not timely filing his federal income tax returns and owing delinquent federal income taxes. The SOR alleges untimely filed tax returns for the 2012 through 2019 tax years and delinquent federal taxes totaling \$10,389 for those same tax years. In his Answer, Applicant admitted the SOR allegations with additional comments. The SOR allegations are established through Applicant's admissions and the Government's evidence. (Ans.; GE 1, 2)

Despite divorcing her in 2000, Applicant continued to reside with his ex-wife until about January 2018. Applicant believed his ex-wife was responsible for filing his federal income tax returns until this time. He claimed he was not aware that he was behind on filing his federal tax returns or paying his federal taxes until January 2018, when he had a falling out with his ex-wife. At that time, he claims that he learned that he had not filed his federal income tax returns for the "three previous years." In June or July of 2018, he reviewed his financial documents and determined that he had not filed his federal income tax returns for all the tax years listed in the SOR. He claimed that he immediately went to a CPA to help him file his late tax returns and make payments on his late taxes. He claimed that, with the help of his CPA, he has now mailed all of his delinquent federal tax returns to the IRS. He claimed that he started making payments on his late taxes in about 2019 or 2020, at about the time his interim clearance was granted. He claimed that he tried to make automatic predetermined payment arrangements with the IRS, but they "are not allowing that now." (Tr.16-17, 20-35, 38-39; GE 1, 2; AE A-C)

There is documentary evidence from a commercial tax filing service that Applicant submitted his 2019 and 2020 federal income tax returns on July 14, 2021. Applicant claimed that he filed his 2016 and 2017 federal income tax returns in August 2021. He provided documents from a commercial tax filing service that arguably confirm these late submissions. He provided a receipt from the U.S. Postal Service (USPS) that he claimed is evidence that he mailed his 2013 and 2018 federal income tax return to the IRS in August 2022. He also provided documents from the IRS showing that he made payments on his delinquent taxes for tax years 2012, 2014, 2015, and 2021. These IRS documents confirm that Applicant filed his federal income tax returns for those tax years, but, with the exception of the 2012 tax year, there is no documentary evidence in the record showing that Applicant filed any of his late income tax returns or made any payments on his delinquent taxes until after the SOR was issued. (Tr. 26-34; Applicant's response to SOR; GE 2; AE A-C)

With respect to the 2012 tax year, Applicant provided a document from the IRS from December 2020, showing that he owed \$6,850.65 for his 2012 taxes. This document confirms that he filed his 2012 tax return but does not confirm when he filed it. There is no documentary evidence that Applicant filed his 2012 income tax return until after he submitted his Questionnaire for National Security Positions (SF 86) and had his security interview. His testimony is consistent with this timeline. He did not provide documentation showing that any of the late federal income tax returns for the 2013, 2016, 2017, 2018, 2019, and 2020 tax years had been acknowledged by the IRS. There is no evidence that Applicant requested, or the IRS granted, a filing extension for any of the tax years relevant to the SOR. (Tr. 21-32; 38-39; GE 2; AE A, C)

Applicant provided documents from the IRS showing that he made two payments totaling about \$1,263 on his 2012 federal tax obligation in September 2022. He provided an undated document from the IRS reflecting that he owed \$7,107.78 for the 2012 tax year and \$2,407.25 for the 2021 tax year. He provided documentary evidence that he made a payment of about \$640 towards his 2014 federal taxes on July 9, 2021 and a payment of about \$400 towards his 2015 federal taxes the following week. (Tr. 30; Applicant's response to SOR; AE A, C)

During the hearing, Applicant had difficulty recalling information about his tax filing and payment history. He acknowledged that his wife currently handles his taxes, as his ex-wife did before. He claimed that he is a "workaholic," is often on the road for work, and doesn't handle his own finances. He claimed that he has learned from his past financial mistakes and they will not happen in the future because he has an accountant and has set up an LLC for his business. (Tr. 21-34; 37-39; GE 2; AE A, C)

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.

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;

(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 has a history of problems with meeting his tax obligations. He failed to timely file eight years of federal income tax returns, and he has delinquent federal tax debt. The evidence is sufficient to raise the above disqualifying conditions.

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;

(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.

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 filing tax returns and 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 claimed that he was not aware that he was behind on his tax obligations because his understanding was that his ex-wife was taking care of these obligations. A degree of ignorance to one's financial situation may suggest an indifference to the proper satisfaction of legal obligations that draws into question Applicant's willingness or capacity to comply with the sometimes complex rules governing the handling and safeguarding of classified information. ISCR Case No. 18-02914 at 4 (App. Bd. Jan. 18, 2020). Accordingly, Applicant's tax filing and payment delinquencies were not due to circumstances beyond his control. Even if one were to assume for the sake of argument that his failure to file and pay his taxes as required was due to circumstances beyond his control, he would still need to show that he has acted responsibly under the circumstances. His admission that he has fallen into his old habit of relying on his wife to stay on top of his finances undermines his ability to do so.

While Applicant has arguably remedied his late income tax return filings and has made some sporadic payments on his delinquent federal taxes, he began these efforts after being put on notice that his failure on these fronts might interfere with his ability to hold a security clearance. With the exception of his 2012 Federal tax return, which he filed after submitting his SF 86 and after his clearance interview, he remedied his other tax filing delinquencies and made the aforementioned payments on his delinquent taxes after the SOR was issued. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019). The timing of these efforts undermines any claims that he was acting in good faith or acting responsibly under the circumstances.

Applicant sought assistance with his taxes from a commercial tax filing service, which resulted in him arguably filing his late federal tax returns and paying some of his delinquent federal taxes. However, he still has outstanding tax debts, and there is no evidence of a payment arrangement with the IRS. Additionally, viewing the evidence as favorably toward Applicant as possible, he has only timely filed his 2021 federal tax return. He therefore has not shown reform and rehabilitation, or a track record of voluntary compliance. For these reasons and his return to a reliance on his wife to monitor his finances, I am unable to find that his financial problems are under control or are being resolved. Applicant's failures to comply with his federal tax obligations continue to cast doubt on his current reliability, trustworthiness, and good judgment. I find that the security concerns arising out of Applicant's untimely tax returns and delinquent taxes are not mitigated.

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 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. I conclude Applicant did not mitigate the financial considerations security concerns.

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

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.

Benjamin R. Dorsey
Administrative Judge