



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



In the matter of:)	
)	
)	ISCR Case No. 21-01634
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Kent, Esq., Department Counsel	
For Applicant:	<i>Personal Representative</i>

09/21/2022

Decision

HYAMS, Ross D., Administrative Judge:

Applicant did not provide sufficient information to mitigate the financial considerations security concerns arising from his delinquent tax returns, tax debts, and charged-off debts. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 7, 2020. On October 15, 2021, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant answered the SOR on October 28, 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 April 12, 2022.

The hearing was convened by video teleconference on June 22, 2022. Government Exhibits (GE) 1-10 and Applicant's Exhibits (AE) A-F were admitted in evidence without objection. After the hearing, I held the record open to provide Applicant with the opportunity to submit additional documentary evidence. He timely submitted documents that I marked as AE G-N, and admitted in evidence without objection.

During the hearing, Department Counsel moved to amend the SOR under DoDD 5220.6 E3 §1.17, to add SOR ¶ 1.j. This amendment was granted without objection, and Applicant admitted the new allegation.

Findings of Fact

In his answer, Applicant admitted SOR allegations ¶¶ 1.a-1.i, and asserted that each had been resolved. He provided documentation concerning each allegation. His admissions are incorporated into my findings of fact. Based on my review of the pleadings, evidence submitted, and testimony, I make the following additional findings of fact:

Applicant is 39 years old. He was married in 2013, and has three minor children with his wife, and another minor child from a previous relationship. He earned a bachelor's degree in 2008. He works for a government contractor as an identity and access management engineer. In his previous employment, he had been granted a public trust clearance. This is his first application for a security clearance. (Tr. 20-23; GE 1)

The SOR alleges failure to timely file federal and state income tax returns, outstanding federal and state tax liens, a delinquent tax debt, two charged-off debts, and a debt in collection. The status of the allegations is as follows:

SOR ¶ 1.a is a charged-off auto loan for \$26,500. It was opened in 2018, and Applicant stopped making payments in 2019. He provided documentation showing that he settled this debt in October 2021 for less than the full amount owed, after the SOR was issued in this case. He stated that he did not know why he stopped making payments on the loan, and asserted that he may have made some partial payments. However, he failed to provide sufficient documentation showing that he made any partial payments on the loan. (Answer; Tr. 34-39, 66-68, 76-78; GE 2, 3, 10; AE A)

SOR ¶ 1.b is a charged-off auto loan for \$19,538. It was opened in 2018, and Applicant stopped making payments in 2019. He provided documentation showing that he settled this debt for less than the full amount owed in September 2021. He stated that he did not know why he stopped making payments on this loan, and asserted that he may have made some partial payments. However, he failed to provide sufficient documentation showing that he made any partial payments on the loan. (Answer; Tr. 34-39, 66-68, 76-78; GE 2, 3, 10; AE A)

SOR ¶ 1.c is a medical account in collection for \$251. Applicant stated that this debt was from an auto accident in which there is ongoing litigation. He claimed that his attorney told him not to pay this bill. He provided documentation showing that he paid the debt after receiving the SOR. (Tr. 39-41, 68; GE 2)

SOR ¶ 1.d is a 2019 federal tax lien for \$11,434. Applicant submitted documentation showing that he paid this debt in October 2021, after receiving the SOR. He asserted that he used his savings to pay the debt. (Answer; Tr. 41-43, 68; GE 3, 4, 10)

SOR ¶ 1.e is a 2019 federal tax lien for \$5,919. Applicant submitted documentation showing that he paid this debt in October 2021, after receiving the SOR. He asserted that he used his savings to pay this debt (Answer; Tr. 43-45, 69; GE 3, 5, 10)

SOR ¶¶ 1.f and 1.g are 2019 and 2020 state tax liens for \$5,892 and \$6,580, respectively. Applicant stated that these liens originated from tax debts owed for tax years 2017 and 2018. He submitted documentation showing that he paid the balance of these liens in October 2021, after receiving the SOR. The record shows that he also made a \$3,421 payment in July 2021, and a \$300 payment in September 2021. The liens were satisfied on November 5, 2021. He asserted that he used his savings to pay this debt. (Answer; Tr. 45-47, 69; GE 3, 6, 7, 9 10)

SOR ¶ 1.h alleges failure to file federal income tax returns for tax years 2011, 2013, 2016, 2019, and 2020. Applicant's October 28, 2021 answer stated that "all of these returns have been filed and accepted by the IRS who is currently processing the returns." Applicant also submitted a post-dated letter from his tax preparer, which made a similar assertion. Neither statement was true. The tax filings in the record show that his 2019, 2020, and 2021 tax returns were prepared on June 22, 2022, which was the hearing date. An accompanying letter from his tax preparer stated that his 2019 returns were accepted, but his 2020 and 2021 return submission were denied. He testified that he found out the day before the hearing that he owed a balance for tax year 2019. He also failed to provide sufficient documentation showing that he filed his returns for tax years 2011, 2013, and 2016, or that any of the other delinquent returns had been filed prior to June 22, 2022. (Tr. 51-54, 61, 69-71; GE 3; AE C-F)

SOR ¶ 1.i alleges failure to file state income tax returns for tax years 2011, 2013, 2016, 2019, and 2020. Applicant's answer provided an identical statement as in ¶ 1.h. The correspondence from his tax preparer did not specifically address his state taxes. He failed to provide sufficient documentation showing that he filed his state tax returns for these years. (Tr. 53-55, 58, 70; GE 3, 10)

SOR ¶ 1.j is a delinquent federal tax debt for tax year 2019 in the approximate amount of \$4,261. Applicant admitted that this debt is unpaid. He stated that he did not know it was owed until the day before his hearing. (Tr. 56-57, 64-65; AE D)

In his post-hearing submission, Applicant provided two state tax installment bills showing that he owes the state \$10,045 in back taxes. The documentation shows that he has an agreement to pay \$451 monthly, however, he did not provide sufficient documentation showing when these installment agreements were made, or that any payments have been made. At the hearing, he testified that he had been making payments of \$200 a month for about five months on his state taxes, but he did not provide sufficient documentation substantiating these payments. (Tr. 60-64, 70-71; AE G, H).

Applicant's tax problems have been ongoing for more than a decade. The record shows that state tax liens were filed against him in 2008 for \$1,091, and in 2016 for \$3,448. Both liens are now satisfied. His 2018 tax account transcript shows that, \$3,373 of his refund was applied to a federal tax debt from 2010. He claimed that he had received

bad advice from his former tax preparer that he did not have to file his taxes yearly. In his background interview, he stated that he filed his 2014-2016 tax returns late. In January 2021, he hired a tax relief company to investigate the extent of his delinquent returns and tax debts, and claims that he provided that information to his current tax preparer. (Tr. 47-48, 51, 71, 80-81; AE B, I; GE 3, 8)

Applicant stated that the cause for his financial problems was the government shut down in 2013, and his wife having three children between 2012-2014. However, the alleged SOR debts are from a later time-period, and most of federal and state tax issues are more recent as well. He also asserted that as a government contractor, he has been laid off almost every year or two when contracts end. However, his SCA shows that he has been regularly employed since February 2006, and his only period of unemployment was between September 2008 and October 2008. While he has frequently changed employers, he failed to provide documentation showing that these employment changes negatively impacted his finances. (Tr. 26-32, 72-74; GE 1, 3)

The most recent credit report in the record shows that Applicant has a \$62,000 auto loan that he opened in 2021, with a \$1,050 monthly payment. He reported that he put \$20,000 down on the vehicle, and the total cost was about \$82,000. This credit report also reports that he has about \$35,000 in student loans that are in deferment; two credit cards with a combined balance of about \$8,000; and \$3,349 monthly mortgage. The record also shows that he had a \$4,643 lien from a utility company, which was released in 2021. (Tr. 37-38, 74; GE 3; AE A)

Applicant did not provide documentation of his current finances, to include his monthly income or expenses, or his savings. After receiving the SOR, Applicant spent about \$32,000 to pay tax and other delinquent debt. He claimed that he had this money in savings, but did not provide further information about why he did not utilize it prior to receiving the SOR. Throughout the hearing, Applicant was evasive in answering questions about his finances, and failed to provide requested documentation to substantiate his claims. (Answer, Tr. 65-79; AE A)

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.

The SOR allegations are established by the interrogatory response, tax records, credit reports, and Applicant's admissions. 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.

Most of Applicant's debts were paid in October 2021, after receiving the SOR in this case. He resolved SOR ¶ 1.b in September 2021, prior to receiving the SOR, but after the clearance process began. 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). He did not establish a sufficient track record of debt payments, or document efforts that he took to resolve his debts until recently. He did not provide sufficient documentation showing that his unfiled federal and state tax returns are resolved, or that his new tax debts are being paid. He did not provide sufficient documentation showing that any of the financial concerns alleged in the SOR occurred under such circumstances that it is

unlikely to recur. He did not provide sufficient documentation of his current financial situation or evidence which might establish his ability to address his debts responsibly. His failure to timely file his federal and state tax returns, pay tax and charged-off debt is recent, not isolated, and in most cases is ongoing. These financial issues continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply. AG ¶ 20(d) only applies to ¶ 1.b, because it was paid before he received the SOR.

There is insufficient documentation to show that Applicant's financial problems occurred under circumstances beyond his control, and that he acted responsibly under the circumstances. Applicant did not take significant action to resolve his debts until after he received the SOR in this case. His use of savings to resolve his delinquent debts all at once suggests that he had the ability to do so, but did not take action until his security clearance application was in jeopardy. AG ¶ 20(b) does not apply.

AG ¶ 20(g) partially applies because Applicant submitted documentation showing that he has a payment arrangement to pay new state tax debt. However, he failed to provide sufficient documentation of any payments made in the installment agreement, or when it was set up. AG ¶ 20(g) does not fully 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. He has new delinquent tax debts, and did not establish a track record of debt payments and responsibly managing his finances. He did not provide sufficient evidence showing that his unfiled federal and

state tax returns are now resolved. Applicant failed to mitigate the security concerns 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.j:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Ross D. Hyams
Administrative Judge