



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 21-00962 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

11/08/2022

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 December 20, 2021, the Department of Defense (DOD) issued 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.

Applicant answered the SOR on April 8, 2022, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on June 16, 2022. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 8 (Item 1 is the SOR.) Applicant provided a response to the FORM that is marked as Applicant Exhibit (AE) A. There were no objections to any of the documents offered and all were admitted into evidence. The case was assigned to me on September 15, 2022.

Findings of Fact

Applicant admitted all of the SOR allegations. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 41 years old. He is a high school graduate. He married in 2006 and separated from his wife in 2018. They share one child. He has cohabited with his girlfriend since August 2019. He has worked for his present employer, a federal contractor, since 2002. (Item 3)

Applicant disclosed in his January 2020 security clearance application (SCA) that he failed to file his 2018 federal and state income tax returns (SOR ¶¶ 1.d and 1.e). He said he was in the middle of his separation from his wife, and he was having difficulty making his mortgage payment and forgot to file his tax returns. He said he was going to file his 2018 tax returns after he completed his 2019 tax returns. (Item 3)

In May 2020, a government investigator interviewed Applicant. He explained he began having financial problems in 2010 when his wife's work hours were reduced, and she was only working on a part-time basis. They were unable to pay all their bills on his salary and her reduced salary. They had difficulty making their mortgage payments. Despite efforts to save their house, it went into foreclosure in late 2018 or early 2019. Applicant said the total amount that was delinquent when it foreclosed was \$65,000. He told the investigator he did not know if he owed any money. Applicant's December 2019 credit report shows the mortgage in a foreclosure status with a past-due amount of \$89,675. His March 2020 credit report shows the account in collection and in foreclosure with a balance of \$283,815 and his October 2021 credit report shows the mortgage is in the foreclosure process and his past-due amount is \$89,675. The debt is alleged in SOR ¶ 1.g (\$89,675). Applicant did not provide any information regarding the status or resolution of this debt. (Items 4, 5, 6, 7)

Applicant told the investigator that he spoke with the IRS about filing his delinquent 2018 tax returns and he was told that he had to first file his 2019 tax returns. He said he would file his 2019 returns and then file his 2018 tax returns. He intended to do the same for his state tax returns for those tax years. Due to the COVID pandemic the tax return due date for tax year 2019 was extended to July 2020. (Item 4)

Applicant completed government interrogatories in August 2021. He reported that he had filed his 2019 and 2020 federal and state income tax returns. For tax year 2019, he owed federal income taxes of approximately \$5,351, and \$13,307 for tax year 2020

(SOR ¶ 1.a). He reported he owed his state \$116 for tax year 2019 and \$1,542 for tax year 2020 (SOR ¶ 1.c). He reported he had not filed his 2018 federal and state income tax returns because he was in the middle of a move. (Item 4) Applicant's response to the FORM stated:

I have filed my taxes and made a payment plan and as for my other debt I'm with [XYZ] to get me back on track. This company has been good to me yes a few years has put me in a bad spot right now but I'm working that and I'm doing everything to correct that. (AE A)

SOR ¶ 1.b alleged Applicant was indebted to the federal government for delinquent taxes for tax year 2016 that remained unpaid until 2020. Applicant admitted the allegation and provided documentary evidence that he made a payment of \$654 to the IRS for tax year 2016 in May 2020. (Items 2, 4)

Applicant did not provide any corroborating evidence that he filed his 2018 federal or state income tax returns or that he has a payment plan with the IRS or his state tax authority and paid his delinquent tax debt.

The SOR alleged two small debts in ¶¶ 1.f (\$429) and 1.h (\$171). Applicant did not provide supporting documents that these debts are resolved.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (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;
- (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 file his 2018 federal and state income tax returns. He is indebted to the federal government for delinquent taxes for tax years, 2019 and 2020 in the approximate amount of \$18,658. He is indebted to his state tax authority in the approximate amount of \$1,658. His mortgage foreclosed and there was a past-due balance owed of \$89,675. Applicant had two other delinquent debts in collection that are unresolved. 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 persons 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 failed to file his 2018 federal and state income tax returns. Despite being on notice that this is a security concern, he failed to provide proof that the returns have been filed. Applicant paid his 2016 federal income taxes in 2020. He did not provide proof that he has a payment arrangement with the IRS or that he has made any payments toward his 2019 and 2020 federal or state tax debts. He has not provided evidence as to the current status or obligation for the deficiency balance on his foreclosed mortgage or that he has contacted the creditors for the other two debts alleged in the SOR or resolved them. Applicant's debts are recent, ongoing, and numerous. Based on his past history of failing to pay his debts, I am unable to find that future financial issues are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant indicated that his financial problems began in 2010 when his wife's income was reduced and they later divorced. These were conditions beyond his control. For the full application of AG ¶ 20(b), Applicant must show he acted responsibly under the circumstances. He has failed to do so. It has been years since his wife's income was reduced. He did not provide evidence that he has contacted creditors or attempted to resolve the debts alleged. He has not provided evidence that he has made a good-faith effort to resolve his debts. He eventually paid his 2016 tax debt in 2020. AG ¶ 20(b) has minimal application.

Applicant stated that he intended to file his delinquent 2018 federal and state tax returns. He did not provide evidence that the returns are filed despite being on notice about the issue. He explained the reason he failed to file the returns was because he was moving. In his response to the FORM, he said he had filed his delinquent tax returns and had a payment plan, but provided no documentary evidence to support his statement. AG ¶ 20(g) does not apply.

Applicant indicated in his response to the FORM that he was working with a financial group to help him get back on track. He did not provide any further explanation as to what tangible efforts he has made to pay his delinquent creditors. AG ¶ 20(c) applies to the extent that this financial group may have provided him some financial counseling, but there is insufficient evidence that his financial problems are resolved or under control.

There is evidence that Applicant paid his delinquent 2016 federal income taxes in 2020. AG ¶ 20(d) applies to the extent that the taxes are paid, but the fact it took three years for him to pay them negates that this was a good-faith effort. AG ¶ 20(d) has minimal application.

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.

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

Applicant has provided scant evidence that he is resolving his taxes and other debts. He has failed to provide sufficient evidence that he filed his 2018 federal and state tax returns. Applicant has not met his burden of persuasion. 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:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: For Applicant

Subparagraphs 1.c-1.h: 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