



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



In the matter of:)
)
) ISCR Case No. 19-03251
)
Applicant for Security Clearance)

Appearances

For Government: Mark Lawton, Esq., Department Counsel
For Applicant: *Pro se*

11/17/2022

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 June 29, 2020, 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.

Applicant answered the SOR on October 18, 2021, and he requested a hearing before an administrative judge. This case was assigned to me on August 15, 2022. The notice of hearing was issued on August 30, 2022, scheduling the hearing for October 19, 2022. I convened the hearing as scheduled. The Government offered exhibits (GE) 1

through 7. There were no objections and the exhibits were admitted into evidence. Applicant and two witnesses testified. Applicant did not offer any documentary evidence. The record was held open until November 2, 2022, to permit him an opportunity to provide documents, which he did and they were marked Applicant Exhibits (AE) A through E. There was no objection and they were admitted into evidence. DOHA received the hearing transcript on October 26, 2022.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a and 1.e. He denied the SOR allegations in ¶¶ 1.c, 1.b, and 1.d. 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 58 years old. He attended college for two years, but did not earn a degree. He was married from 1987 to 1991 and from 1996 to 2015. He has one adult child from his last marriage. He served in the military from 1983 to 1987 and was honorably discharged. Applicant was employed from June 2012 to April 2014 by a federal contractor. He worked for a commercial contractor from April 2014 to June 2014 and was unemployed from June 2014 to February 2016. Since February 2016, he has been employed by a federal contractor. His current salary is \$93,000. (Transcript (Tr.) 17-25; GE 1)

Applicant attributed his financial problems to his period of unemployment from June 2014 to February 2016 and his 2015 divorce. The SOR alleges two charged-off credit card debts (¶ 1.a - \$17,514 and ¶ 1.b - \$10,060), two medical collection accounts (1.c - \$1,126 and 1.d - \$1,552) and approximately \$7,000 of unpaid federal income taxes (¶ 1.e). The allegations are corroborated by Applicant's admissions in his security clearance application (SCA), statements made to a government investigator, and credit reports from February 2018, May 2019, January 2021, and October 2022. (GE 1, 2, 3, 4, 5, 6, 7; AE E)

In Applicant's January 2018 SCA, he disclosed that he failed to file his 2015 federal income tax return because he and his wife were going through a divorce, and he believed she had filed a joint return for them. She filed her 2015 federal tax return as single. In Applicant's SCA, he stated, "I have cleared this up and paid all monies owed." He also said in his SCA that he resolved that tax debt in 2016 and he paid what he owed and owed nothing additional. (GE 1)

Applicant was interviewed by a government investigator in December 2018. During the interview, he told the investigator that in 2017, he received a notice from the IRS that he had failed to file his 2014 federal income tax return and he owed \$10,000. Applicant said he was aware that the IRS had seized his refunds for subsequent tax years, but he never contacted the IRS to make payment arrangements. He said he filed the delinquent 2014 federal tax return in 2017. He said he relied on the IRS to withhold his refunds until the tax debt was paid. He said he had spoken with a tax preparer and he planned to

contact the IRS to start a payment plan by January 2019. In his answer to the SOR, he stated, "I admit amount is still owed but I am paying IRS back-February 2020 I sent \$1,800 and send approximately \$100 per month." At his hearing, Applicant did not provide proof of the payments he claimed he made to the IRS. He testified that he never made any voluntary payments to the IRS. It is unknown if the delinquent filing was for tax year 2014 or 2015. (GE 6)

Applicant testified that when he was going through his divorce he thought his wife would file their tax return as joint, but she filed single for tax year 2015. He was unaware until he received a notice from the IRS in approximately 2017 about his delinquent 2015 taxes, but failed to make payment arrangements with them. He said he received two or three letters advising him of the tax debt and the last one was in 2021. He called the IRS on the telephone, but got tired of waiting on hold. He received the SOR in June 2020 that alleged his delinquent tax debt. He reiterated that he relied on the IRS to withhold any refund he was to receive and apply it to his delinquent tax debt. Applicant has not contacted the IRS to make payment arrangements to pay his delinquent taxes. (Tr. 26-35)

Post-hearing, Applicant provided documents to show that on October 19, 2022, he employed the services of a tax relief company (TRC). Based on the emails he provided, the TRC is investigating his tax issues and he had an appointment to meet with them on November 1, 2022. No evidence was presented to show Applicant has made any payments on his tax debt with the IRS. (AE A, B, C, D)

Applicant admitted he owed the credit card debts in SOR ¶¶ 1.a and 1.b and that he is the sole owner of the accounts. His credit reports show that both debts were charged off and the date of last activity was in 2016. Applicant disclosed both debts in his SCA and said he had some financial difficulties due to his divorce, but he was working to pay back both creditors. He said he was working with each of these creditors to make payment arrangements to pay the debts. (Tr. 35-37; GE 1, 2, 3, 4, 5, 6, 7)

During his background interview, Applicant told the government investigator that he did not have the money to pay these accounts. He said he did not intend to pay the account in SOR ¶¶ 1.a and 1.b, because he does not have the money. At his hearing, he testified that he was making \$20 payments twice a month for three years on the debt in SOR ¶ 1.b that had a charged-off balance of \$10,060. He said he has no idea what the current balance is on the debt. He testified that he had made no effort to repay the debt in SOR ¶ 1.a. He explained the reason he did not pay these debts was that he was angry with his ex-wife. In his background interview, he told the investigator he used the credit cards for living expenses. In his post-hearing email, he confirmed he has not made an effort to repay the credit card debt in SOR ¶ 1.a. He agreed to provide proof that he has been making payments on the debt in SOR ¶ 1.b, but did not. (Tr. 35-41; GE 6)

Applicant testified that he paid the collection accounts for medical services alleged in SOR ¶¶ 1.c and 1.d, and he would provide documentary proof of the resolution of these debts. Applicant explained that during his 2014 period of unemployment, he did not have

medical insurance and these debts became delinquent. He said he contacted the creditors and made payment arrangements. His January 2021 credit report reflects the debt in SOR ¶ 1.c was paid. He did not provide proof he paid the debt in SOR ¶ 1.d. (Tr. 41-47; GE 5)

Applicant testified that he purchased a 2020 sports car two months ago for \$73,000. He traded in his 2016 sports car, which he purchased in 2017, which he was making approximately \$1,300 monthly payments. His new vehicle loan reduced his car payment to \$1,000 a month. He has about \$1,200 in his checking account and \$5,000 in his saving account. He has not participated in financial counseling. He has a pension plan, but no other investments. He withdrew money from his pension plan in 2014 to pay his medical expenses because he was unemployed and did not have medical insurance. He did not pay the taxes at the time of the withdrawal. He does not provide financial support for anyone. (Tr. 48-56)

Two witnesses testified on behalf of Applicant. His supervisor stated that he has known Applicant for about six or seven years. He described him as reliable, responsible, and exemplary. He completes the tasks assigned and the customers provide positive feedback on his work. Applicant has not had any disciplinary action. (Tr. 57-62)

The other witness testified that he has known Applicant both personally and professionally for about 20 to 25 years. Their children played soccer together and Applicant is his daughter's coach. He is a dedicated family man. In his work capacity, Applicant is an outstanding employee. He is kind, honest, hardworking, punctual, and a valuable asset to the command and the nation. (Tr. 63-67)

Applicant testified that he would never put his country in danger and disclose sensitive information. He has had a clearance for many years without incident. His family members have served in the military and he is dedicated to his country.

Applicant repeatedly made contradictory statements and misrepresentations in his SCA, his answer to the SOR, his interview with the government investigator, and in his testimony during his hearing. I did not find him credible.

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.

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 no 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 owes approximately \$7,000 in federal income taxes that remains unpaid. He has been aware of his tax debt for years and has not made any voluntarily payments toward its resolution. He also has two credit card debts with significant balances that were charged-off and two medical debts that were in collection status. He does not intend to pay one of the credit cards. 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 none-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 made inconsistent statements in his SCA, his interview with the government investigator, and his hearing testimony regarding his federal tax debt. In his January 2018 SCA, he explained he was confused and believed his wife was going to file their 2015 federal income tax return jointly. He later learned she filed as single. He said he received a letter from the IRS in 2017 advising him of his delinquent filing and tax debt. He said in his SCA that he paid what he owed. He later told the government investigator that he owed the IRS about \$7,000 and was going to contact them in January 2019 to make payment arrangements. In his answer to the SOR, he said he paid the IRS \$1,800 in February 2020 and was making monthly payments of \$100. The \$1,800 payment may have been an involuntary withholding by the IRS of a tax refund. Applicant did not provide evidence to substantiate any payments. At his hearing, he testified that he has never contacted the IRS and is resolving the delinquent tax debt through the involuntary withholding by the IRS of his tax refunds. After his hearing, he contacted TRC to help him address his tax issues. There is no evidence he has made an arrangement with the IRS to pay his delinquent federal taxes. AG ¶ 20(g) does not apply.

Applicant attributed his financial problems to his 2015 divorce and extended period of unemployment in 2014 to 2016. These were conditions beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. He has not done so. He has been employed since February 2016, more than six years. He has failed to address his tax debt, despite repeatedly asserting he would do so. He acknowledged he owed two large credit card debts that were charged off in 2016. He has made no effort to pay the debt in SOR ¶ 1.a because he is angry with his ex-wife. AG ¶ 20(b) has minimal application.

Applicant is making small payments on the charged-off credit card debt in SOR ¶ 1.b, but his efforts do not rise to a good-faith effort to repay the creditor. Applicant recently purchased a vehicle for \$73,000 and admitted his car payment was reduced by \$300. He has not increased the payments to resolve his credit card debt. Applicant has the resources to resolve the debt but chooses to make minimal payments on the large debt. Based on the balance owed, it will be more than 20 years before he pays the current balance. His actions do not reflect a reasonableness or adherence to duty. He is merely relying on a small payment toward the debt to claim the “good faith” mitigating condition. He is given credit for making some payments, but the evidence does not support the full application of AG ¶ 20(d). This mitigating condition does apply to the medical account in SOR ¶ 1.c that he paid.

The DOHA Appeal Board has previously explained what constitutes a “good faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term “good-faith.” However, the Board has indicated that the concept of good-faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.” ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Applicant has not had financial counseling and there are not clear indications his finances are under control. AG ¶ 20(c) does not apply. His failure to pay his tax debt, his credit card debts and a medical bill casts doubt on his reliability, good judgment, and trustworthiness. His financial issues are recent and ongoing. 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 has been aware since at least 2017 that he owes the IRS federal income taxes. His past statements and testimony regarding actions and efforts to address the debt are not persuasive. He has procrastinated for years and has not voluntarily made payments. He has not attempted to resolve his large credit card debt and does not intend to do so. His minimal payments on his other large credit card debt raises questions about his commitment to resolving the debt. Applicant has not met his burden of persuasion.

The DOHA Appeal Board also has held that:

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).¹

Applicant's non-compliance with a fundamental legal obligation to pay his federal income taxes and other debts raises serious concerns. 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
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.e:	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

¹ ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).