



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



In the matter of:)	
)	
)	ISCR Case No. 21-02357
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

09/27/2022

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for a security clearance is denied.

Statement of the Case

On November 12, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR, Item 1) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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), implemented by DOD on June 8, 2017.

Applicant elected in his December 3, 2021 response to the SOR (Answer, Item 1), to have his case decided on the written record in lieu of a hearing. The Government submitted its written case on January 31, 2022. A complete copy of the file of relevant

material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on January 31, 2022. He responded to the Government's FORM on March 2, 2022, with documentation I collectively marked as AE A and admitted in evidence without objection. The case was assigned to me on April 12, 2022. The Government's documents identified as Items 1 through 5 in the FORM are admitted in evidence without objection.

Findings of Fact

Applicant admitted all of the SOR allegations in his Answer. He is 52 years old. He married in 1995, divorced in 2000, and remarried in 2004. He has three children, two adults and a minor. A fourth child is deceased. Applicant obtained a bachelor's degree in 1991 and a master's degree in 1999. He took pre-med classes from 2000 to 2003, in anticipation of attending medical school. As of his July 2020 security clearance application (SCA), he had worked as a senior software engineer for his employer since July 2017. He also worked part time as a self-employed senior software engineer for his own company since October 2009. He was granted a security clearance in 2017. He has owned his home since June 2014. (Items 1, 2, 5)

The SOR alleged that Applicant failed to file his federal and state income tax returns, as required, for tax years (TY) 2013 through 2017, and that his federal and state income tax returns for TY 2013 through 2015 remained unfiled as of the date of the SOR. In addition to his admissions in his Answer, Applicant disclosed and discussed his failure to timely file his federal and state income tax returns for TY 2013 through 2017 on his SCA and during his August 2020 background interview, and this information is also reported in IRS and state tax account transcripts from August 2021. (Items 1-5)

Applicant attributed his failure to file his relevant federal and state income tax returns to the advice he received from his certified public accountant (CPA), in 2018, that it was unnecessary for him to file his federal and state income tax returns for TY 2013 and 2014, because he would have been due a refund had he timely filed, and he forfeited his refunds since three years had lapsed. He also cited to his mother's illness and passing in early 2018 as factors that contributed to his delay in filing his relevant income tax returns. He also acknowledged that he delayed and procrastinated providing necessary tax documentation to his CPA, so that his CPA could file his relevant federal and state income tax returns. (Items 1, 2, 5; AE A)

IRS and state tax account transcripts reflect that Applicant: (1) had not filed his federal and state income tax returns for TY 2013, 2014, and 2015 as of August 2021; (2) filed his federal income tax returns for TY 2016 and 2017 in May 2019, and he had a zero account balance for those tax years; and (3) filed his state income tax returns for TY 2016, 2017, and 2018 in April 2019, and no further action was required on his part. The IRS tax account transcripts also reflect that Applicant was given an extension, until October 2017, to file his federal income tax return for TY 2016, and he did not request an extension to file his federal income tax return for TY 2017. Applicant provided copies

of his federal and state income tax returns for TY 2013, 2014, and 2015. He filed his federal and state income tax returns for TY 2013, 2014, and 2015 in February 2022. He did not owe any taxes for these tax years. He would have been due federal refunds of \$3,426, \$6,460, and \$2,587, and state refunds of \$958, \$1,154, and \$1,069, for TY 2013, 2014, and 2015, respectively. (Items 1-4; AE A)

Applicant described his financial status as “good” during his background interview. He indicated that his failure to timely file his relevant income tax returns did not contribute to other financial problems. He indicated that he intended to timely file his income tax returns in the future and that he learned his lesson, became more organized, and was more attentive to the deadline for filing his income tax returns. (Item 5)

Policies

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 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(a), 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 access to classified information 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 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 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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 describes conditions that could raise a security concern and may be disqualifying. AG ¶ 19(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” applies. Applicant failed to file, as required, his federal and state income tax returns for TY 2013 through 2017.

I have considered all of the mitigating conditions under AG ¶ 20 and find the following relevant:

- (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; 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 acknowledged that he delayed and procrastinated in providing necessary tax documentation to his CPA so that his CPA could timely file his relevant federal and state income tax returns. His reliance on his CPA's advice did not occur until 2018, when he was already delinquent in filing his federal and state income tax returns for TY 2013, 2014, 2015, and 2016. While Applicant indicated that his mother's illness and passing in early 2018 affected his ability to timely file his federal and state income tax returns for TY 2016 and 2017, the IRS gave him an extension, until October 2017, to file his federal income tax returns for TY 2016, and he did not request an extension to file his federal income tax returns for TY 2017. He did not file his federal and state income tax returns for TY 2016 and 2017 until 2019, and he did not file his federal and state income tax returns for TY 2013, 2014, and 2015 until February 2022, several months after the SOR. I find that Applicant's failure to timely file his federal and state income tax returns for TY 2013 through 2017 continues to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), 20(c), and 20(g) are 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 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. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that 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.d:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge