



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



In the matter of:)
)
) ISCR Case No. 20-03701
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

12/01/2022

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to timely file federal income tax returns for tax years (TY) 2014 - 2019. He failed to pay his taxes for TYs 2012 to 2019, except 2016. The evidence is insufficient to mitigate the financial considerations security concerns. Clearance is denied.

Statement of the Case

Applicant submitted his most recent security clearance application (SCA) on November 19, 2019, seeking the continuation of a clearance required for his position with a federal contractor. An investigator from the Office of Personnel Management (OPM) interviewed him on February 26, 2020. After reviewing the information gathered during the background investigation, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations) on April 9, 2021. Applicant answered the SOR on April 23 and 28, 2021, submitted documents in mitigation, and requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA).

The case was originally assigned to two other administrative judges. After Applicant was granted two postponements, the case was assigned to me on May 27, 2022. The DOHA issued a notice of hearing (NOH) on May 2, 2022, scheduling the hearing for May 31, 2022. I convened the hearing as scheduled. The Government submitted Exhibits (GE) 1 through 5. GE 1 – 3 were admitted without objections. Applicant objected to GE 4, an unauthenticated summary of his interview with a Government investigator in February 2020. I sustained the objection and did not consider the summary of the interview. GE 5 is the Government’s discovery letter, dated July 23, 2021, which was marked and admitted into the record, but it is not substantive evidence.

Applicant testified, as reflected in the transcript received on June 15, 2022. He submitted documentary evidence, which I marked as Applicant Exhibits (AE) 1 through 11, and admitted into the record without objections. I received AE 11 post-hearing. I marked as Hearing Exhibit (HE) 1 Department Counsel’s email to the then-presiding administrative judge and Applicant, with a Motion to Amend the SOR, dated May 18, 2021.

Procedural Issue

Prior to the hearing, Applicant emailed documentary evidence to the then-presiding administrative judge and Department Counsel. Based on the documents received, on April 25, 2022, Department Counsel moved to amend the SOR by adding the following two paragraphs:

“1.f: You are indebted to the IRS in the approximate amount of \$45,390 for delinquent taxes for tax years 2012 – 2015, and 2017 – 2019. As of the date of this statement of Reasons, the taxes remain unpaid.

1.g: You are indebted to the State of Maryland in the approximate amount of \$9,661 for delinquent taxes. As of the date of this statement of Reasons, the taxes remain unpaid.”

During the hearing, Department Counsel renewed the motion to amend. Applicant did not object, and I granted the motion as requested. (See HE 1; Tr. 24 – 27)

Department Counsel also moved to amend SOR ¶ 1.b by deleting “\$19,466” and substituting “\$8,867,” and SOR ¶ 1.d by deleting “\$0.00” and substituting “\$618”. Without objections, I granted both motions. (Tr. 27 - 29)

Applicant requested the correction of his name on the SOR. He is the first with his name in his family, not “the second.” He requested the Roman numeral “II” not be used after his name. I granted his request.

Findings of Fact

As amended, the SOR alleges that Applicant: (1.a) failed to file, as required, Federal and state income tax returns for TY 2014 through 2019; (1.b) is past-due on a car note with a balance of \$8,867; (1.c) owes \$4,407 in child support; (1.d) owes \$618 to a bank for a charged-off account; (1.e) owes \$474 to a credit union for a charged-off account; (1.f) owes the IRS \$45,390 in delinquent taxes for TY 2012 - 2015 and TY 2017 – 2019; and (1.g) owes his state \$9,661 in delinquent taxes.

Applicant admitted SOR ¶¶ 1.b, 1.d, 1.f, and 1.g. He denied the remaining SOR allegations. I incorporated into my findings of fact his SOR admissions, and those at his hearing. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is 63 years old. He graduated from high school in 1977. He honorably served in the military on active duty from 1981 to 1987. He started college in 1996, and he is still attending college, seeking his bachelor's degree. He married in 1992 and divorced in 2017. He has a 15-year-old daughter for whom he provides financial support.

Applicant's employment history, as disclosed in his 2020 SCA, is difficult to follow, appears to have conflicting employments, and contains several unaccounted periods. He was self-employed as an investigator (part-time) for two employers between July 2002 and December 2007, while at the same time working full-time as an investigator for a federal agency. He was employed full-time by a federal contractor as a residential sales representative from December 2003 to April 2005. A federal contractor employed him between August 2007 and November 2007 as a full-time security officer. He was unemployed from December 2007 to December 2008. He provided no explanation or reason for this period of unemployment.

A federal agency employed Applicant as a paralegal from December 2008 to July 2013. He received eligibility for a top-secret clearance in 2013, which was renewed until the DCSA CAF revoked his clearance in April 2021. He worked for a federal contractor between July and September 2013, but was terminated when he failed his training. He was unemployed from September to December 2013. He failed to indicate his status from January 2014 to April 2016. A federal contractor employed Applicant from April 2016 to November 2017, when he was terminated for failure to perform. He worked full-time for a federal contractor from November 2017 to December 2019, while at the same time doing part-time work for a second federal contractor. His annual income during that time was \$87,000. (GE 1; Tr. 42-43) In December 2019, the contract ended and he was laid off. Applicant was unemployed until June 2020, when his current employer and clearance sponsor hired him. His current annual salary is \$80,000. (Tr. 36; 42-43) He has about \$1,000 in both his savings and checking accounts. He has about \$3,300 in his 401K retirement account. (Tr. 49)

In Section 26 (Financial Record) of his 2020 SCA, Applicant disclosed that he had financial problems that included: not filing federal and state income tax returns for TY

2013 to 2018; owing income taxes to the IRS and his state; being delinquent \$4,100 in his child support obligation; having a car repossessed and owing \$8,000; and having two charged-off consumer accounts.

Applicant attributed his financial problems to: having to change his income tax filing status during the marital separation, which increased his tax liability; his divorce; not knowing how to file his tax return as an independent contractor; and his periods of unemployment and underemployment. He claimed that at an undisclosed date, he entered into a payment plan with the IRS to pay \$120 monthly, but he failed to make the payments. (At hearing, he acknowledged this was not true.) He also claimed he paid \$1,100 to a tax preparation company to help him file his taxes, but the company disappeared. (GE 1; Tr. 31, 32)

In his answer to the SOR, Applicant denied that he failed to file Federal and state income tax returns for TY 2014 through 2019. (SOR ¶ 1.a) He hired an accountant to help him file his delinquent tax returns for TY 2014 - 2019 in February 2020. He claimed he had established a payment agreement with the IRS. During his testimony, he acknowledged he did not have a payment agreement established with the IRS when he answered the SOR or at the time of his hearing. (Tr. 80 – 81)

Applicant testified that he filed his income tax returns for TY 2013 to 2019 in February 2020. (Tr. 66 - 70) Documentary evidence shows he filed his income tax returns for TY 2017 and 2018 on February 27, 2020; for TY 2019 on February 28, 2020; and for TY 2020 on October 15, 2021. The IRS noted that he requested an extension to file his TY 2020 tax return on May 4, 2021. (See AE 3) Applicant highlighted that he timely filed his income tax returns for TY 2020 and 2021. (Tr. 33) He presented no evidence to show the IRS granted him extensions to file his tax returns, except for TY 2020.

The IRS assigned Applicant's delinquent tax obligation to a collection agency on May 21, 2021. Documentary evidence shows he owes the IRS \$45,388 in delinquent taxes for TY 2012 to 2015 and 2017 to 2019. (SOR ¶ 1.f) (AE 3) He testified that he owes the IRS an additional \$1,000 for his TY 2021 income taxes, thus his total debt to the IRS totals \$46,388. (Tr. 80 - 81)

Applicant hired a tax relief company to help him with his income tax problems on April 21, 2022. (AE 6) Apparently, he was not satisfied with it. He hired a second company (CT) on May 26, 2022. (AE 9) At hearing, he testified he was working with CT to establish a payment plan with the IRS. (Tr. 73 - 74) Post-hearing, Applicant submitted a statement from CT, dated May 31, 2022, indicating the company was in the process of contacting the IRS to bring his account into full compliance, amending a tax return, and negotiating a resolution for the balances. (AE 11) Applicant testified that he had previously entered into a payment agreement with the IRS (date undisclosed), and made several payments of \$120 a month. When confronted in cross-examination, he acknowledged he did not have a payment agreement established with the IRS when he answered the SOR or at the time of his hearing. (Tr. 80 – 81) He presented no documentary evidence of any

payments made to the IRS, or of any payment agreements established to satisfy his delinquent taxes for TY 2012 to 2019.

Applicant admitted he was delinquent for \$2,409, on an account with an \$8,967 balance for a repossessed car. (SOR ¶ 1.b) He explained that he was laid off in 2013, and did not have the money to pay the car. He surrendered the car to the creditor. He claimed he established a payment arrangement to pay \$125 per month. He did not present documentary evidence of the payment agreement. However, he presented documentary evidence of a \$632.95 payment made in March 2022. (AE 5; Tr. 32-33) He did not present evidence of any other payments made before or after his March 2022 payment.

Applicant denied he was \$4,407 delinquent in his child support. (SOR ¶ 1.c) In November 2015, he was in arrears for \$8,688. He explained he was unemployed and could not afford to make the payments. (Tr. 40) The family court did not find him in contempt of court for failure to make the payments. (AE 7) He has been making his child support payments as required since he found work in 2015, and is current on his payments. (See AE 8) He stated he has an arrearage balance of \$2,400.

Concerning SOR ¶ 1.e, Applicant admitted he owes \$474 to a credit union for overdraft fees when he was unemployed. The account was charged off. Prior to the hearing, he claimed he had established a \$25 a month payment arrangement. He did not present documentary evidence of the payment arrangement. His documentary evidence shows he made a \$110 payment in March 2022, and a \$60 payment in April 2022. He claimed he has been making payments well before and after he received the SOR. He presented no documentary evidence to support his claims.

SOR ¶ 1.g alleged and Applicant admitted that he owes his state \$9,661 for delinquent taxes. On January 31, 2022, Applicant established a payment plan with his state, promising to pay \$310 monthly. He made two payments in January 2022, one in March 2022, and one in April 2022. (AE 4; Tr. 83)

Applicant presented no documentary evidence of efforts to file his delinquent income tax returns for TYs 2013 through 2019, until 2020. In February 2020, he retained the services of a tax relief company seeking help to file past-due tax returns and resolve his tax debt. His documentary evidence shows that the tax relief company he retained filed his TYs 2014 to 2019 income tax returns on February 2020. (AE 7)

According to IRS regulations, in 2012, a person making over \$9,750 gross income had to file an income tax return, and in 2021, the filing threshold was \$12,550 gross income. Applicant did not present documentary evidence to show he was below the IRS filing threshold for the years in question.

Applicant acknowledged that he has made mistakes in the past concerning his finances, but he is trying to correct them. He believes that if he is granted clearance eligibility, he will be able to resolve all of his financial problems. He noted that his credit

rating has recently increased. He believes that shows his financial situation is improving. He has been paying his bills on time and maintaining good credit, and he intends to continue to do so in the future. He noted that he timely filed income tax returns for TYs 2020 and 2021. His intent is to continue filing his tax returns on time and paying his taxes. He is looking forward to establishing a payment plan with the IRS, and promised to make his payments on time and to pay his delinquent taxes.

Applicant promised to be financially responsible in the future. He testified that he is following a budget and he has received financial counseling through his tax relief company.

Policies

The SOR was issued 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* (Directive) (January 2, 1992), as amended; and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after June 8, 2017.

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AGs list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AGs should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in Security Executive Agent Directive (SEAD) 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling

interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

Failure or inability 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 Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

Applicant failed to timely file federal and state income tax returns for TY 2014 through 2019. He filed his tax returns for TY 2014 through 2019 in February 2020. He owes the IRS \$45,390 for delinquent taxes for TY 2012 to 2015 and 2017 to 2019. As of his hearing date, he did not have a payment agreement, although he was working on it. He presented no documentary evidence of efforts to file his delinquent income tax returns

before 2020. He presented no documentary evidence of efforts to pay or make payment agreements with the IRS or the state since he accrued the delinquent taxes until 2020. Additionally, he is past due \$2,409, on an \$8,867 balance, for a repossessed car; owes \$2,400 in arrears in child support; and over \$300 on a charged-off account to a credit union.

AG ¶ 19 provides disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts”; “(c) a history of not meeting financial obligations”; and “(f) failure to file . . . annual Federal, state, or local income tax returns . . . or failure to pay annual Federal, state, or local income tax as required.” The record established these disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

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 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.

The DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The

standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant attributed his financial problems to his divorce; having to change his income tax filing status during the marital separation and after his divorce, which increased his tax liability; not knowing how to file his tax returns as an independent contractor; and his periods of unemployment and underemployment that made his financial situation difficult.

I have considered as circumstances beyond Applicant’s control his divorce and his unemployment and underemployment. These circumstances could have adversely affected his ability to timely file his income tax returns, albeit for a short period, or aggravated his financial situation. I do not find his lack of knowledge to file his tax returns as an independent contractor a circumstance beyond his control. The IRS, legal services on military bases, financial institutions, and accountants assist taxpayers filing their taxes. He presented no documentary evidence he sought help to file his income tax returns until 2020. I note that Applicant’s divorce was in 2017, but he failed to file tax returns for TYs 2013 to 2019. He testified that he failed to file tax returns for TY 2013 because he did not have the money to pay his taxes after he changed in filing status. Apparently, he did not file the following years because he was afraid of the penalties and interest he would owe for his failure to timely file and to pay his taxes.

Applicant filed his federal income tax returns for TYs 2014 to 2019 in 2020, after he submitted his 2019 SCA. He took no action to pay his delinquent state taxes until January 2022, and he is still working on a payment plan with the IRS to pay his delinquent taxes. Additionally, Applicant claimed in his answer to the SOR that he had established payment agreements with the IRS and with the creditors of the debts alleged in SOR ¶¶ 1.b and 1.e. At hearing, he admitted he lied about having a payment agreement with the IRS, and he failed to present documentary evidence to corroborate his claims of payment agreements. I gave him credit for making some payments to the creditors of SOR ¶¶ 1.b and 1.e, but he made the payments after he received the SOR. I also note that the amount of the payments he made do not match the amounts of the monthly payment agreements he claimed he had established. His evidence is insufficient to establish that he has been financially responsible under the circumstances.

Applicant disclosed his tax problems in his 2020 SCA. Because of his military service and years working for federal contractors and holding a clearance since 2013, Applicant knew or should have known of the security concerns raised by his failure to timely file income tax returns and to pay his taxes. Notwithstanding, he did nothing to file his delinquent federal income tax returns until 2020, and as of May 2022, has not established a payment plan with the IRS to pay his delinquent taxes.

About the failure to timely file federal and state income tax returns, the DOHA Appeal Board has commented:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward *inducing an applicant to file tax returns*. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. *Id.* A person 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. Aug. 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. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis in original). See ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015).

The record evidence shows that Applicant has a problem complying with government rules, regulations, and systems. He failed to establish full mitigation of the financial considerations security concerns. I am unable to find that Applicant acted responsibly under the circumstances or that he made a good-faith effort to timely file his income tax returns or pay his taxes. Applicant's financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. SEAD 4, App. A, ¶¶ 2(a) and 2(d). Under AG ¶ 2(c), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant, 63, seeks the continuation of his clearance eligibility. The evidence against grant of Applicant's security clearance is substantial. He failed to timely file federal and state income tax returns for many years, and he failed to pay delinquent federal taxes. His financial problems are recent and not under control.

Applicant knew that he needed to file his federal and state income tax returns and pay his income taxes. Whether or not he knew he was going to receive refunds or had sufficient funds to pay any taxes owed, he had a legal requirement to timely file his tax returns. He did not fully understand or appreciate the importance of timely filing of tax returns in security clearance determinations. His promises of future financial responsibility are insufficient to fully mitigate the financial considerations security concerns. Moreover, his false statements in his 2020 SCA and his false testimony raise serious concerns about his honesty, trustworthiness, and good judgment.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. *See Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations security concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time.

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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a, 1.b, 1.e, and 1.f: | Against Applicant |
| Subparagraphs 1.c, 1.d, and 1.g: | For Applicant |

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national security interests of the United States to grant or continue Applicant's eligibility for a security clearance. Clearance is denied.

JUAN J. RIVERA
Administrative Judge