



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



In the matter of:)	
)	
)	ISCR Case No. 21-00634
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey M. De Angelis, 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 May 21, 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 response to the SOR (Answer, Item 3) to have his case decided on the written record in lieu of a hearing. The Government submitted its written case on November 30, 2021. 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 December 9, 2021. He responded to the Government's FORM, on December 22, 2021 and December 27, 2021, with documentation I collectively marked as AE A, and admitted in evidence without objection. The case was assigned to me on March 17, 2022. The Government's documents identified as Items 1 through 8 in the FORM are admitted in evidence without objection.

Findings of Fact

Applicant admitted all of the SOR allegations in his Answer. He is 38 years old. He was married and he has two children--one adult and one minor. He graduated from high school in 2002. He attended college from 2002 to 2003, in 2010, and in 2014, but he did not earn a degree. He obtained a certificate in heating, ventilation, and air conditioning in 2020. As of his April 2020 SCA, he worked as a pipefitter for his employer, a DOD contractor, since June 2006. He was granted a security clearance in 2010. (Items 1,3, 4, 5)

The SOR alleged that Applicant owed the IRS \$15,152 in delinquent federal taxes for tax years (TY) 2011, 2013, 2014, 2016, 2017, and 2018 (SOR ¶ 1.a). It also alleged that he had a judgment entered against him in 2019 for a \$1,150 past-due medical debt (SOR ¶ 1.b) and a university account in collection for \$336 (SOR ¶ 1.c). In addition to his admissions in his Answer, Applicant disclosed and discussed his delinquent federal taxes and delinquent debts on his 2020 security clearance application (SCA), during his June 2020 background interview, and in his April 2021 response to interrogatories. Court records also report the liens entered against Applicant by the IRS. Court records and the February 2021 credit bureau report also report SOR debt ¶ 1.c. (Items 1, 3, 4, 5, 6, 7)

Applicant attributed his delinquent federal taxes to a lack of income, his spouse's one-year period of unemployment from 2014 to 2015, and because "I had a lot going on with helping my family." He stated in his SCA that he hired a tax relief program to assist him with resolving his delinquent federal taxes, but "all they did was take over 3,000 dollars from me." He also stated that he was working with another tax company to assist him with resolving his delinquent federal taxes. He stated that this tax company contacted the IRS on his behalf, guided him to change his tax withholdings to zero to allow for more taxes to be taken out of his paycheck, and assisted him with setting up a payment plan to resolve his delinquent federal taxes. (Items 1, 3, 4, 5).

Court records reflect that the IRS entered liens against Applicant in the amounts of \$29,675, \$671, and \$9,176, in July 2014, September 2019, and June 2021, respectively. April 2021 IRS tax account transcripts reflect that Applicant owed past-due federal taxes in the amounts of \$2,077, \$2,597, \$1,029, \$2,688, \$5,702, and \$1,056, for a total of \$15,149, for TY 2011, 2013, 2014, 2016, 2017, and 2018. The transcripts reflect that he did not have any outstanding federal taxes for TY 2012, 2015, and 2019. The transcripts reflect that the IRS applied credits of \$80, \$3,701, and \$4,453 in 2014,

2016, and 2020, respectively, to his outstanding taxes for TY 2011, and Applicant had not made any payments toward his outstanding taxes. Applicant contacted the IRS in May and June 2021 to set up a payment arrangement to resolve his outstanding taxes. He stated that he entered into a payment arrangement of \$106 monthly beginning in June 2021. As of December 2021, he was still trying to reach a payment arrangement with the IRS to resolve his outstanding taxes. He made four payments to the IRS, from June to September 2021, of \$110, \$110, \$100, and \$50. (Items 1, 3, 4, 5, 6; AE A)

Applicant stated that he entered into a payment arrangement of \$57 monthly, between June 2021 and July 2023, to resolve the medical judgment in SOR ¶ 1.b. As of December 2021, he stated that he made an initial payment of \$228, and he would make subsequent payments of \$50, for a total of \$836, to resolve this debt. Applicant paid the debt in SOR ¶ 1.c. (Items 3, 5, 7; AE A)

Applicant described his financial status as “improving” during his background interview. He traveled to the Bahamas for tourism in 2014 and 2017, and to Mexico in 2018. A personal financial statement that he completed in April 2021 reflected that he had a monthly net remainder of \$147, not accounting for any payments toward the IRS. (Items 4, 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(a), an “inability to satisfy debts,” AG ¶ 19(c), “a history of not meeting financial obligations,” and 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” apply. Applicant was unable to pay his debts and he owes approximately \$15,152 in delinquent federal taxes for TY 2011, 2013, 2014, 2016, 2017, and 2018.

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.

Conditions beyond Applicant's control, as previously discussed, contributed to his financial problems. For the full application of AG ¶ 20(b), Applicant must provide evidence that he acted responsibly under his circumstances. Applicant paid SOR ¶ 1.c, and I find SOR ¶ 1.c in Applicant's favor.

Applicant paid only \$480 toward his outstanding federal taxes between June and September 2021. Although he stated that he was working with a tax company to resolve his outstanding federal taxes, he did not provide documentation to corroborate his claim and he was still trying to reach a payment arrangement with the IRS as of December 2021. In addition, while he stated that he made an initial payment of \$228 to resolve SOR ¶ 1.b, he did not provide documentation to corroborate his claim. There is no evidence that he has received financial counseling. I find that Applicant's financial difficulties continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), 20(c), and 20(g) are not applicable.

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 has not mitigated 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.b:	Against Applicant
Subparagraph 1.c:	For 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