



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



In the matter of:)
)
) ISCR Case No. 22-00170
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

09/20/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. He refuted the Guideline E, personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On March 21, 2022, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. 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 March 29, 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 8, 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 1 through 10 (Item 1 is the SOR). Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. The Government's evidence is admitted. The case was assigned to me on September 13, 2022.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.b and 1.g. He denied the SOR allegations in ¶¶ 1.a, 1.c, 1.d, 1.e, 1.f, and 2.a though 2.d. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 55 years old and married, with six adult children. He served in the military from 1985 to 1996 and received an honorable discharge. He attended community college in 2005, but did not earn a degree. He has been employed by a federal contractor since June 2020. He had a three-month period of unemployment before then due to the pandemic. He was employed from May 2019 to March 2020. He was unemployed due to a medical issue from September 2017 to May 2019. Before then he was employed from 2009 to September 2017 by different civilian employers. He worked for federal contractors from 1997 to 2007. In his security clearance application, he left a gap in his employment history from 2007 to 2009. (Item 3)

The debts alleged in the SOR are corroborated by Applicant's admissions in his answer to the SOR, government interrogatories, statements to a government investigator, other official documents, and credit reports from August 2020 and August 2021. (Items 2, 3, 4, 5, 6, 7, 8, 9, 10)

The SOR alleges Applicant is indebted to the Federal Government for a tax lien entered in 2019, in the approximate amount of \$55,308. Applicant denied the debt in his SOR answer. He said he hired a lawyer and his tax debt was entered into the "Fresh Start" program with the IRS. He stated: "If that program has been rescinded, I am unaware as I have not received any further correspondence from the Internal Revenue Service about his matter." In Applicant's February 2022 response to Government Interrogatories he stated that he had applied for the IRS "Fresh Start" program and was accepted. He could not recall the name of the tax firm that assisted him and said he did not have a current federal tax liability since he started the program. He also stated he did not currently have an installment agreement or other payment plan with the IRS. (Items 2, 3, 5)

The IRS website states the Fresh Start program is a program that helps taxpayers by adopting flexibility in Offers-In-Compromise (OIC) terms, which allows a taxpayer to settle an amount owed for less. The IRS will not accept an OIC if the taxpayer can pay the amount owed in full or through a payment plan. The IRS looks at a reasonable

collection potential.¹ Applicant did not provide any documentary evidence that he is participating in this program, the terms of the agreement, the amount he is paying to the IRS through this program, that his tax liability was forgiven, or the tax lien was removed. The tax lien is unresolved. (Item 5)

Applicant admitted he owed the debts alleged in SOR ¶¶ 1.b (\$43,573) and 1.g (past-due mortgage payment of \$8,753 on a balance of \$153,931). In his SOR answer regarding the debt in SOR ¶ 1.b, he said he was currently “working with a debt specialist to work on the remainder of my outstanding debt in anticipation of applying for a mortgage loan.” This debt was for a swimming pool loan he obtained in 2016, which he stopped paying in 2019. (Item 3) Regarding the debt in SOR ¶ 1.g, he stated his property had gone into foreclosure and “sold by the bank for less than what they would have received at a ‘short sale.’ After the foreclosure sale, I did not receive any correspondence regarding any balance owed. This is also being addressed by my debt specialist.” Applicant did not provide any evidence to support his claims or any actions he has taken to resolve these debts. He did not provide evidence as to actions his debt specialist has taken. These debts are unresolved. (Items 2, 7, 8, 9, 10)

Applicant denied the collection account in SOR ¶ 1.c (\$3,923). In his SOR answer he said he had no recollection of the creditor, and when he reviewed his credit report with a mortgage broker it did not appear. He did not provide any evidence to show he is not responsible for this debt. (Items 2, 9, 10)

Applicant denied the medical collection accounts in SOR ¶¶ 1.d (\$280) 1.e (\$252), and 1.f (\$252). During his September 2020 interview with a government investigator, he was confronted with these debts. He acknowledged the medical debts were likely from medical services he received in 2017. He believed the services were covered by his medical insurance at the time, but because he was laid off they likely were not covered. He believed they should have been. He told the investigator he would rectify the debts. He stated in his SOR answer that he contacted the creditors and requested they provide him the dates of service and billing information. He stated he had not received any correspondence from the creditors. He said his debt specialist had also been in contact with the creditors requesting information about the accounts. Applicant did not provide any documentary evidence about his efforts to dispute or resolve the debts or anything from his debt specialists. These debts are unresolved. (Items 2, 8, 9, 10)

Applicant completed a security clearance application (SCA) in June 2020. In response to section 26, which asked if in the past seven years he had failed to file or pay Federal, state, or other taxes, he answered “no.” It also asked if in the past seven years he had property foreclosed, defaulted on any type of loan, had bills turned over to a collection agency or had any account suspended, charged off, or canceled for failure to pay, or if he was over 120 days delinquent on any debt not previously mentioned. He stated “no.” The SOR alleged Applicant deliberately failed to disclose his Federal tax lien

¹ www.irs.gov

(SOR ¶ 1.a), and the collection accounts in ¶ 1.b (swimming pool account) and ¶ 1.c (\$3,923).

During Applicant's September 2020 background investigation with a government investigator he stated he had no debts that were in collection in the past seven years. He did not disclose his Federal tax lien. In his June 2021 answer to government interrogatories which asked if he had any additional adverse or delinquent accounts, including taxes, that he owed, he answered "no." The SOR alleges his failure to disclose this derogatory information was deliberate. (Items 3, 7, 8)

In Applicant's SOR answer, he explained that he did not disclose his tax debt because the SCA asked if he failed to file his tax returns. He stated he had filed them, so his answer of "no" was correct. He further stated: "I did not intend to mislead on my answer as my tax liability was removed by the [above] mentioned program." (Item 2) Applicant was referring to the Fresh Start program. (Item 2)

During Applicant's background interview with the government investigator he did not disclose the swimming pool collection account (SOR ¶ 1.b). When confronted with the debt he acknowledged it and explained that when he was laid off in 2019 he could not afford the monthly payments of \$500. After not paying for about two months the creditor contacted him and Applicant requested the loan be extended so he could make up for missed payments and make a future payment agreement. The creditor declined Applicant's proposal. Applicant said he never heard from the company again and assumed the debt was charged off. He did not attempt to contact the creditor again. He said he was unaware the debt went to collection. He claimed he forgot about the debt so he did not disclose it. (Items 2, 7, 8)

Regarding the debt in SOR ¶ 1.c, Applicant said in his SOR answer he had no recollection of it and denied deliberately failing to disclose it. There is no evidence in his background interview that Applicant was confronted with this debt by the investigator. (Item 2, 7, 8)

Applicant provided a personal financial statement as part of his answer to government interrogatories. Under the section "Debts-list all financial obligations by name of person/company/firm." He did not list any payments being made to the IRS. (Item 9)

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.

A Federal tax lien in the amount of \$55,308 was filed against Applicant in 2019. Applicant has numerous other delinquent debts that are also 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 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;

(e) the individual had a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of action to resolve the issue; 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 has not provided any substantive evidence to corroborate his participation in an IRS program to resolve his Federal tax lien or that he no longer has a Federal tax liability. The program he says he is participating in is not a forgiveness program, but one that assists taxpayers in settling their tax debts. He said he had a tax lawyer assist him, but failed to provide any evidence to show his actions. AG ¶ 20(g) does not apply.

Applicant was unemployed for a significant period and had medical issues. These were conditions beyond his control. For the full application of AG ¶ 20(b), Applicant must show he acted responsibly under the circumstances. He provided no explanation for why he has a \$55,308 Federal tax lien. He mentions he has a debt specialist, but provided no corroborating evidence of any actions either he or the debt specialist may have taken to resolve his outstanding debts. AG ¶ 20(b) has minimal application.

Applicant failed to provide documentary or other corroborating evidence that he is resolving any of his other delinquent debts. He merely states that a debt specialist is handling the matters. He disputes some of his debts, but failed to provide documented proof to substantiate his dispute or other evidence of action to resolve the debts. I am unable to determine if he has participated in financial counseling and there is minimal evidence that he is resolving any of his delinquent debts. The evidence is insufficient to conclude future issues are unlikely to recur. I find his behavior cast doubts on his good judgment, reliability and trustworthiness. AG ¶¶ 20(a), 20(c), 20(d), and 20(e) do not apply.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concerns for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

Applicant failed to disclose his Federal tax lien in his SCA, during his personal subject interview with a government investigator and on government interrogatories. His explanation was he did not believe he had to disclose the information because he believed his tax liability was removed because he was participating in the IRS Fresh Start program. He stated he did not intentionally mean to mislead the government. However, misguided Applicant's interpretation of the program he says he is participating in with the IRS, I find that he believes he no longer has a tax liability and therefore did not have to report it. Regarding the other delinquent debts he failed to disclose, Applicant claimed he was unaware of them or did not remember them and his actions were unintentional. There is insufficient evidence to conclude Applicant intentionally failed to disclose or deliberately falsified information.

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 Guidelines F and E in my whole-person analysis.

Applicant has not established a reliable financial track record and has not met his burden of persuasion. The evidence supports that Applicant is unfamiliar with his financial obligations and has taken minimal action to resolve them. His large Federal tax lien raises significant concerns about his ability to comply with rules and regulations. The record evidence leaves me with serious 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. Applicant refuted the personal conduct security concerns raised under Guideline E.

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.g:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.d:	For 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