



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



In the matter of:)
)
) ISCR Case No. 20-01252
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

01/17/2023

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On August 3, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant provided responses to the SOR dated March 18, 2021, November 29, 2021, and February 26, 2022 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on September 2, 2022.

The hearing was convened as scheduled on November 3, 2022. At the hearing, I admitted Government Exhibits (GE) 1 through 6 and Applicant Exhibits (AE) A through F in evidence without objection. At Applicant’s request, I left the record open until November 17, 2022, for him to provide documents to support his case. He provided no documents by this deadline. On November 21, 2022, he requested an extension of this deadline. On November 28, 2022, I reopened the record and extended the post-hearing deadline until December 12, 2022. On November 30, 2022 and December 12, 2022, he submitted AE G through Y, which I admitted in evidence without objection. He also

provided a document entitled, "List and Explanation of Exhibits" that I have marked as Hearing Exhibit 1. DOHA received the transcript (Tr.) on November 10, 2022.

Findings of Fact

Applicant is a 70-year-old employee of a government contractor. He has worked for his current employer since about July 2016. He was awarded a bachelor's degree in 1979. He took some graduate courses but did not earn a graduate degree. He was married from 1983 until a divorce in 2004. He remarried in 2008. He has six adult children and four adult stepchildren. (Tr. 30-32; GE 1-2)

In the SOR, the Government alleged that Applicant had not timely filed his federal and state income tax returns for the 2012 through 2018 tax years (SOR ¶¶ 1.a and 1.b). In his Answer, Applicant denied the SOR allegations, as he claimed that he had since filed all of the relevant income tax returns. (SOR; Answer)

Applicant failed to timely file his federal income tax returns for the 2012 through 2018 tax years despite being required to do so. Beginning in December 2019 and ending in November 2022, he intermittently filed these delinquent federal income tax returns, until he filed them all. He claimed that he filed some of his delinquent federal income tax returns earlier than the date indicated on his IRS account transcripts. However, he did not file any of the relevant federal income tax returns until about nine months after his May 2019 security interview. He acknowledged that his desire to earn a security clearance motivated him to file his outstanding federal and state income tax returns. (Tr. 28-29, 32-38, 43, 54; Answer; GE 1-4; AE E, L-O, R, S, U, W, X).

Applicant timely filed his federal income tax returns for the 2019 and 2021 tax years. He filed his 2020 federal income tax return in August 2022, after it was due. Applicant owed approximately \$31,238 in delinquent taxes for the 2012 tax year. He scheduled a payment with the IRS of \$12,500 on his 2012 federal tax delinquency for early December 2022. He borrowed the money to make this payment from his employment savings plan. He owed about \$27,323 and \$39,867 in delinquent federal taxes for the 2013 and 2015 tax years, respectively. He is owed a refund of about \$4,309 from the IRS for the 2014 tax year. He owed about \$10,102 and \$1,538 in delinquent federal taxes for the 2020 and 2021 tax years, respectively. He claimed that the tax delinquencies listed on his IRS account transcripts will be reduced when the IRS calculates the effects of several real property sales and offsets from state tax refunds. He provided no documentation from the IRS to corroborate lower tax balances. He did not have a payment arrangement with the IRS. Any adverse information not alleged in the SOR, such as Applicant's late filing of income tax returns for tax years other than 2012 through 2018 or delinquent taxes he owed cannot be used for disqualification purposes. It may be considered when assessing the application of mitigating conditions and for the whole-person analysis. (Tr. 44-49; GE 1-2; AE E, G, H, K, O, R, S, W, X)

Applicant was not required to file state income tax returns with the states in which he was residing for the 2012 and 2013 tax years. He therefore did not fail to timely file state income tax returns for the 2012 and 2013 tax years. He failed to timely file his

state income tax returns in State A for the 2014, 2015, and 2016 tax years. He claimed that he has now filed his state income tax returns for the 2014, 2015, and 2016 tax years with State A. He provided W2 and 1099 documents from the State A taxation authority to corroborate the 2014 filing. He provided W2 and 1099 documents from the State A taxation authority, an unsigned copy of a 2015 State A income tax return, and a mailing receipt from October 2020 that he claimed is proof that he mailed it. He provided W2 and 1099 documents from the State A taxation authority to corroborate the 2016 filing. A May 10, 2020 letter from the State A taxation authority accompanying these 2014 through 2016 W2 and 1099 documents indicated that State A had not yet received his state income tax returns. Given the corroborating documentation, I find that Applicant filed his 2015 State A income tax return in October 2020. Given the lack of corroborating documentation, I am unable to find that he has filed his State A income tax returns for the 2014 and 2016 tax years. (Tr. 28-29, 32-38; Answer; GE 1-4; AE E, Q,)

Applicant failed to timely file his state income tax returns in State B for the 2015 through 2018 tax years. He claimed that he has since filed his state income tax returns with the State B taxation authority for these tax years, but State B's taxation authority has no record of the 2015 and 2018 tax year filings. He provided an unsigned copy of a 2015 State B tax return. He provided no other documentation with respect to his State B income tax filings for the 2016, 2017, and 2018 tax years. Given the lack of corroborating documentation, I am unable to find that he has filed his State B income tax returns for the 2016, 2017, and 2018 tax years. (Tr. 28-29, 32-38; Answer; GE 1, 2; AE E, I, J, P)

Applicant provided no documentation to corroborate that he has filed a state income tax return for the 2021 tax year. He provided signed 2020 State A and State B income tax returns from February 2022 corroborating that he filed these returns. He provided no documentation to corroborate that he has filed a state income tax return for the 2019 tax year. (Tr. 28-29, 32-38; Answer; AE I, J)

Applicant acknowledged that he owed State A and State B taxes for the 2015 tax year in the combined amount of about \$1,300. He has provided no evidence of payments towards this tax indebtedness. (GE 1, 2; AE P, Q)

Applicant's excuses for not timely filing his federal and state income tax returns are many and varied. He has moved several times, which led to him losing records. He also claimed that some of his records might have been stolen because there were prowlers who apparently broke into his home. In 2012, he was a self-employed contractor responsible for paying his own taxes. He did not sufficiently pay taxes resulting in an unspecified tax burden that he found out about in 2020. He lost a job in 2014 and changed jobs several times. He was diagnosed with cancer in 2018, as was his wife, in 2020. In 2013, he and his wife spent a significant amount of money opening a business that failed because of a dispute with their landlord. Applicant's wife, who was a trained income tax preparer, thought that she could use this loss as a deduction for tax purposes, so they delayed filing their income tax returns. Applicant was working hard, and, as his wife had agreed to file the income tax returns, he lost track of them.

When he realized that the income tax returns had not been filed, he was hesitant to confront his wife for fear of upsetting her. He claimed she had post-traumatic stress disorder over finances from the conditions of her earlier marriage. His wife's growing anxiety over these untimely filings contributed to further procrastination. When he eventually began addressing the taxes himself, the pandemic and IRS backlog slowed his efforts to remedy the situation. (Tr. 38-43, 50-52; Answer; GE 1-4; AE A, D, E)

Applicant earned approximately \$200,000 per year through his salary and bonuses. His wife cannot work because of her cancer diagnosis and resulting treatment. He has a few thousand dollars in a savings account and a few thousand dollars in a retirement account. He has paid an additional \$2,500 per month for an unused apartment in City A since 2018 that is a significant drain on his resources. He claimed that he has been saving about \$300 per month in order to pay down his tax delinquencies once he enters into payment plans with the IRS and the states to which he owes taxes. He has been in regular contact with the IRS and relevant state taxation authorities to resolve his tax deficiencies since no later than November 2021. He does not follow a written budget and has not received financial counseling. Applicant planned to set up payment arrangements to resolve his remaining tax delinquencies once he and the IRS determine his tax indebtedness. (Tr. 49-53; Answer; GE 2; AE D)

Applicant provided a periodic and year-end performance review from his employer for 2020. According to these reviews, he is an excellent performer, shows leadership skills, acts ethically, and is honest. He also provided a character reference letter from an individual who is a long-time security clearance holder that came to know Applicant through church. This individual found him to be trustworthy and of high moral character. (AE B, C, F)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines 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.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following is potentially applicable in this case:

(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.

Despite being required to do so, Applicant did not timely file federal income tax returns for seven consecutive years. He did not timely file state income tax returns for five consecutive years, as required. The evidence is sufficient to raise the above disqualifying condition.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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; 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.

Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as filing tax returns and paying taxes when due, 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. 17-01382 at 4 (App. Bd. May 16, 2018).

While Applicant has now filed his outstanding federal income tax returns, he did not provide sufficient evidence that he has filed all of his outstanding state income tax returns. He owes significant, delinquent federal and state taxes. His financial issues are ongoing and I am unable to find that they are unlikely to recur.

Applicant has suffered from issues that are arguably beyond his control, including his and his wife's cancer diagnoses, loss of employment, a failed business, and his wife's problems in her previous marriage. However, some of the reasons Applicant provided for not timely filing his income tax returns were within his control. For example, losing documents in moves, relying solely on his wife to satisfy tax obligations, and

focusing too much on work. Regardless, none of these causes can reasonably excuse his failure to comply with his tax filing obligations for seven years. Moreover, Applicant acknowledged that he was not adequately monitoring his tax obligations. A degree of ignorance to one's financial situation may suggest an indifference to the proper satisfaction of legal obligations that draws into question Applicant's willingness or capacity to comply with the sometimes complex rules governing the handling and safeguarding of classified information. ISCR Case No. 18-02914 at 4 (App. Bd. Jan. 18, 2020). Accordingly, the conditions that led to Applicant's late tax filings were not largely beyond his control.

Applicant has not provided evidence that he has payment arrangements with the IRS or the tax authority for State A or B. He scheduled a \$12,500 payment to address his 2012 IRS tax delinquency after he realized his clearance was in jeopardy. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019). Applicant therefore failed to show this payment was a good-faith effort to resolve his debt.

While Applicant has made arrangements with the IRS to file his delinquent income tax returns, and has competed those filings, he has not provided sufficient evidence that he filed all of his late state income tax returns. Moreover, he has not provided evidence that he made arrangements with the IRS or state tax authorities to pay his delinquent federal or state taxes.

None of the mitigating factors is fully applicable. The financial considerations security concerns are not mitigated.

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 relevant 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 have considered

Applicant's positive character and work references and I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant, except for his 2012 and 2013 state income tax returns, which I find in favor of Applicant.

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Benjamin R. Dorsey
Administrative Judge