



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



In the matter of:)
)
) ISCR Case No. 22-00272
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

01/19/2023

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is granted.

Statement of the Case

The Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations.¹ 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, 2017.²

¹ The SOR is undated and not on official letterhead.

² Applicant indicated in his response to the FORM that in the SOR packet he was provided it included an old version of DOD Directive 5220.6 and adjudicated guidelines. He retrieved the correct version from the Defense Office of Hearings and Appeals website.

Applicant answered the SOR on July 5, 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 August 22, 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 2 through 6. (Item 1 is the SOR.) Applicant provided a timely response to the FORM. He provided Applicant Exhibits (AE) A through M. There were no objections to any documents offered and it was all admitted into evidence. The case was assigned to me on October 20, 2022.

Findings of Fact

Applicant admitted the SOR allegation in ¶ 1.a. He denied the SOR allegations in ¶¶ 1.b through 1.d. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 29 years old. He married in November 2022 and has no children. He graduated from high school in 2011. He attended college full time from 2011 to 2016. He attended college part-time from January 2017 to June 2017 and from August 2018 to November 2019. He did not earned a degree. He intends to continue to pursue a degree. He has worked for a federal contractor since October 2020. (Item 3)

After leaving college in 2016, Applicant had a series of jobs, some part-time and sometimes he was self-employed as a rideshare driver. From July 2017 to June 2018, he worked full-time as a member of AmeriCorps and moved to another state (State A). He worked with inner city and at-risk youth. He was not classified as an employee under this program and was paid a stipend, which barely covered his expenses in a high cost-of-living state. He did not have a car, and his commute was an hour to and from the school by bus. Although he found this experience very rewarding, his days were often 13 hours long with his commute. After he completed his obligation, he returned to his home state (State B) and worked as a rideshare driver. (AE A)

In the past, Applicant's father filed his federal and state income tax returns for him. He was aware that because he lived in State A and State B for parts of 2017 and 2018, he would have to file state income tax returns for both states. He believed his father had filed his tax returns, but later learned that his father had only filed extensions. He resumed college, continued working as a driver, and worked for a company that hosted afterschool programs for elementary school children that centered around science, technology, engineering, and math. He was considered an independent contractor. In February 2019, he started a new job with a restaurant and his father told him he would file an extension for him for his 2018 tax returns. This is when he learned that his 2017 returns were not yet filed, and he needed to complete them. Applicant admitted he was overwhelmed with school and work. At the same time, his girlfriend, with whom he was living, was diagnosed with Type 1 diabetes. He admitted he procrastinated in filing his tax returns. (AE A)

Applicant admitted he was intimidated because he had never filed them on his own. He was expecting them to be complex because of his multiple moves and non-traditional income from AmeriCorps, as a rideshare driver, and as an independent contractor. Because of his limited income, he did not expect to owe taxes. His parents often filed their tax returns late, and he believed it was permitted to file late if you did not owe taxes. He now understands that is not correct. (AE A)

Applicant suffers from Obsessive Compulsive Disorder (OCD), which he is able to control. It rarely affects his regular day-to-day activities, but he often feels compelled to make sure everything he does is perfect. It sometimes causes him to delay acting on certain things until he can ensure every detail is correct. He admits that he was reluctant to immediately address his tax issues because once he started them they would consume him. (AE A)

In 2020, Applicant and his girlfriend moved to State C. Because he had only lived in one state the previous year, his tax returns were not complicated and he filed his 2019 federal and state tax returns. It was the first year he filed his tax returns by himself. He admitted he did not budget enough time to complete them and his federal tax return was filed on July 22, 2020. Due to the pandemic, the deadline for filing 2019 tax returns was extended to July 15, 2020. He was seven days late. His adjusted gross income was \$24,475. He was entitled to a refund. (AE A, D).

In January 2021, Applicant's apartment was burglarized. His backpack was stolen. In it was his mileage log he kept when he was a rideshare driver in 2018. He was not sure how to proceed to complete his delinquent tax returns because he did not have this needed information.

In April 2021, Applicant completed a security clearance application (SCA) and in it disclosed his failure to timely file his federal and state tax returns for 2017 and 2018. He explained in the SCA that he believed for 2017 that he would not owe taxes and they would be complicated to complete. He filed his 2017 federal and state income tax returns in April 2021. (AE B)

Applicant also disclosed in his SCA that he failed to file his 2018 federal and state income tax returns. He explained that he did not think he owed taxes. During this tax year he was a driver and when his mileage log was stolen, it complicated how to estimate his expenses. He readily admitted that he should not have delayed filing his tax returns. His 2018 federal and state tax returns were filed in October 2021. His adjusted gross income was \$5,741. With penalties and interest, he owed \$301, which he paid. (AE C)

SOR ¶ 1.a alleged Applicant failed to timely file his federal income tax returns for tax years 2017, 2018, and 2019. Tax year 2017 was filed in April 2021, tax year 2018 was filed in October 2021, and tax year 2019 was filed a week late in July 2020. (AE B, C, D)

SOR ¶ 1.b alleged Applicant failed to timely file State A income tax returns for tax years 2017 and 2018. Applicant filed his 2017 State A tax return in April 2021. He owed

\$10 with penalties and interest, which he has paid. He filed his 2018 State A tax return in October 2021. He did not owe taxes. (AE A, H)

SOR ¶ 1.c alleged Applicant failed to timely file State B income tax returns for 2017, 2018, and 2019. He filed his 2017 State B income tax returns in May 2021 and his 2018 returns in October 2021. Applicant filed his 2019 State B returns on July 22, 2020. He stated in his FORM response that State B allows for an automatic six-month extension for filing if no taxes are owed. State B's filing deadline was June 1, 2020. Because Applicant did not owe state taxes, he was within the six-month extension period. (AE A; AE G page 1, 6, 9-11)

SOR ¶ 1.d alleged Applicant failed to timely file State C income tax return for tax year 2018. Applicant erroneously disclosed on his SCA that he lived in State C in 2018. He actually lived there in 2020, so he was not required to file in State C for 2018. Applicant filed his 2020 State C income tax returns 14 days late. He owed \$48 and paid the tax. (AE I)

Applicant filed his federal income tax return for tax year 2020 in May 2021. He was entitled to a refund. He filed his 2021 tax year federal income tax return on time in April 2022. His state tax returns for these years were filed timely.

Applicant takes responsibility for failing to timely file his federal and state income tax returns. He primarily attributed his failures to being inexperienced; overwhelmed that filing tax returns would be complicated because he lived in multiple states; believing for a period that his father had filed for him; his belief that if you did not owe taxes you did not have to file on time; and his procrastination. Applicant recognizes that he failed to make filing his tax returns a priority, but that has changed. (AE A)

In Applicant's response to the FORM, he said all of his delinquent tax returns are filed and provided supporting documents. He paid whatever taxes were owed and any penalties and interest imposed. He now uses a software program to help him prepare his tax returns and plans to continue to use it in the future. He has created reminders on his calendar to notify him when tax deadlines are approaching. He keeps a tax folder on his computer with copies of his previous tax returns. He has opted to receive all of his tax documents electronically and stores them by year on his computer. If he receives a tax document that is not delivered electronically, he scans it and saves it to the folder on his computer. He no longer works as an independent contractor so his tax returns are simpler. (AE A)

I have not considered any derogatory information that was not alleged in the SOR for disqualifying purposes. I may consider this information when making a credibility determination, in the application of mitigating conditions, and in my whole-person analysis.

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:

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local tax as required.

Applicant failed to timely file federal income tax returns for tax years 2017, 2018, and 2019. He failed to timely file State A and State B income tax returns for tax years 2017 and 2018. There is sufficient evidence to support the application of the above disqualifying condition.

It was alleged Applicant failed to timely file State C income tax returns for tax year 2018, but he did not live in State C in 2018. It also was alleged that he failed to timely file his State B tax return for tax year 2019. I find in his favor for this allegation.

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; 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.

All of Applicant's delinquent tax returns are filed and he paid any taxes he owed. Applicant repeatedly failed to timely file his federal and state income tax returns. I believe future tax issues are unlikely to recur because Applicant has a new appreciation for the seriousness of ensuring he timely files and pays his taxes, he has a system in place that will help him meet the appropriate deadlines, and he has matured and now understands that filing tax returns on time is a serious responsibility. AG ¶ 20(a) applies.

Some of the delay in filing can be attributed to Applicant's inexperience and intimidation of the potential complexity for filing the returns. Some of the delay can be attributed to him incorrectly believing that he did not have to timely file tax returns if he did not owe taxes, which could be the case if he was under a certain income level, but not if he was self-employed as a rideshare driver. I attributed these reasons to him being young and immature. These reasons were marginally beyond his control. However, his continued delay in addressing his delinquent tax filings was due to his failure to make it a priority, and to his procrastination, both of which were within his control. The question is did he act responsibly under the circumstances. I find AG ¶ 20(b) has minimal application because of Applicant's continued procrastination and failure to get his tax returns filed for an extended period of time.

There is no evidence that Applicant has received financial counseling, but there is evidence that he has resolved his tax issues and that future problems are unlikely to recur. I find AG ¶ 20(c) has some application. I also find AG ¶ 20(g) applies as all of Applicant's delinquent federal and state tax returns are filed.

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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I have considered whether Applicant was intentionally attempting to avoid filing his tax returns and whether he is likely to do so in the future. I note that he relied on his father in the past to take care of his tax returns, and he did not have an appreciation for the seriousness of making sure it is done timely. Clearly, his father did not set a good example. When Applicant was in State A, receiving a stipend, and had minimum income he did not understand his tax obligations. Moving to another state only exacerbated his paralysis in tackling his tax issues, so he again procrastinated, which made his situation worse. Applicant now understands his legal obligations and responsibility and will comply with the rules and regulations that govern filing tax returns.

Applicant has met his burden of persuasion. The record evidence leaves me with no questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant successfully mitigated the security concerns raised under Guideline F, financial considerations.

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:	FOR APPLICANT
Subparagraph 1.a-1.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