



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



In the matter of:)
)
) ISCR Case No. 22-00160
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

02/01/2023

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 March 3, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant provided a response to the SOR dated April 1, 2022 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on October 25, 2022.

I convened the hearing as scheduled on December 8, 2022. At the hearing, I admitted Government Exhibits (GE) 1 through 7 and Applicant Exhibits (AE) A through T in evidence without objection. I received the transcript (Tr.) on December 15, 2022.

Findings of Fact

Applicant is a 45-year-old employee of a government contractor. He has worked for his current employer since about February 2018. He has been employed full time since about 2013. He was awarded a high school diploma in 1995. He took some community college courses but did not earn an associate's degree. He has been married and divorced twice. His first marriage was from 2002 until 2005 and his second marriage was from 2009 until 2014. He has resided with a cohabitant since March 2020. He has two children, ages 18 and 12. He served on active duty with the U.S Air Force from 2001 until 2007 and with the Air Force Reserve from 2007 until 2010. He received honorable discharges from both. (Tr. 33-34; GE 1, 2, 6, 7)

In the SOR, the Government alleged that Applicant had not timely filed his federal income tax returns for the 2012 through 2017 and 2019 tax years (SOR ¶ 1.a). It also alleged that he owed delinquent federal taxes in the following amounts: \$8,000 for the 2012, 2014, 2015, and 2016 tax years (SOR ¶ 1.b); \$2,758 for the 2013 tax year (SOR ¶ 1.c); \$7,062 for the 2017 tax year (SOR ¶ 1.d); and \$4,6667 for the 2019 tax year (SOR ¶ 1.e). Finally, it alleged that Applicant filed a Chapter 7 bankruptcy in 2016 that was discharged in 2018 (SOR ¶ 1.f). In his Answer, Applicant denied the SOR allegations in SOR ¶¶ 1.a and 1.b with additional comment. He admitted the SOR allegations in SOR ¶¶ 1.c through 1.f with additional comment. I have incorporated his admissions as findings of fact. Despite his denial of the allegations in SOR ¶¶ 1.a and 1.b, those allegations are established by Applicant's Questionnaires for National Security Positions he submitted in April 2018 and August 2020, the IRS Account Transcripts, and the 2019 and 2020 security interviews. (SOR; Answer; GE 1-3, 6, 7)

Applicant failed to timely file his federal income tax returns for the 2012 through 2017 and 2019 tax years despite being required to do so. He also failed to timely file his 2018 federal income tax return. Any adverse information not alleged in the SOR, such as Applicant's late filing of income tax returns for other tax years cannot be used for disqualification purposes, however it may be considered in assessing an applicant's credibility; in evaluating an applicant's evidence of extenuation, mitigation, or changed circumstances; in considering whether the applicant has demonstrated successful rehabilitation; and in applying the whole-person concept. (ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017)) In 2017, he asked his sister, who is an income tax filing professional, to file his income tax returns for the 2012 through 2016 tax years. He acknowledged that he had not timely filed his 2012 through 2017 federal income tax returns because he was "lazy." She agreed to file these federal income tax returns for him. However, she never filed Applicant's 2012 through 2016 income tax returns with the IRS and forgot to tell Applicant about this failure. He was aware that his 2012 through 2016 federal income tax returns had not been filed by March 2018. He then contacted an acquaintance who helped others file their income tax returns. He asked this acquaintance to help him file his 2013 through 2017 federal income tax returns. (Tr. 23-27, 37-44, 47-51; Answer; GE 1-3, 6, 7; AE A-E)

Applicant believed that the aforementioned acquaintance filed his federal income tax returns for tax years 2013 through 2017, sometime in 2018. However, in 2020, he

received a notice from the IRS stating that he had not appropriately filed his federal income tax returns for at least some of these tax years. Applicant believed that the IRS did not process the income tax returns for tax years 2013 through 2017 that his acquaintance submitted in 2018, because he did not sign them. Applicant claimed that in 2020, he contacted the IRS in response to this notice. He claimed that, because of this contact with the IRS, he refiled his 2013 through 2017 federal income tax returns in 2020. He later realized that he had refiled unsigned versions of these returns, and he believes that the IRS did not process them in 2020 for this reason. (Tr. 23-27, 41, 42-43, 45-52; Answer; GE 1-3, 6, 7; AE A-J)

Applicant eventually successfully filed his 2013 through 2017 and 2019 federal income tax returns between August 2020 and November 2021. He has yet to file his 2012 federal income tax return. He claimed that the IRS indicated that he is not required to file this income tax return for an unspecified reason. He filed his 2018 federal income tax return in March 2022, after it was due. He filed his 2020 federal income tax return in September 2021, after it was due. He timely filed his 2021 federal income tax return in March 2022. He claimed that he was in regular contact with the IRS about his tax filings in 2018 and 2021. (Tr. 23-27, 41, 42-43, 45-52; Answer; GE 1-3, 6, 7; AE A-J)

Applicant owed approximately \$8,000 in delinquent federal taxes for tax years 2012, 2014, 2015, and 2016. He owed approximately \$2,758 in delinquent taxes for the 2013 tax year. He owed approximately \$7,062 in delinquent taxes for the 2017 tax year. He owed approximately \$4,667 in delinquent taxes for the 2019 tax year. He also owed unspecified delinquent federal taxes for the 2018 and 2020 tax years. In October 2021, he made a written offer to the IRS for a payment arrangement of \$300 per month for his delinquent federal taxes for the 2013 through 2019 tax years. In March 2022, the IRS acknowledged in writing that he had made a payment arrangement of \$450 per month for tax years 2013 through 2019. Applicant paid the delinquent federal taxes for tax years 2013 through 2017 and 2019 from March 2022 through September 2022. As of September 2022, these delinquent taxes are paid. He paid his delinquent federal taxes for the 2018 tax year between March and November 2022, when he paid them in full. He paid his delinquent federal taxes for the 2020 tax year between June and September 2022, when he paid them in full. He paid approximately \$30,000 in delinquent taxes. He was able to pay these delinquent taxes with his income. He received a refund for the 2021 tax year. (Tr. 23-27, 45-48; 53; Answer; GE 1-3, 6, 7; AE A-J)

By 2018, at the latest, Applicant knew that he owed delinquent taxes. He claimed that he waited until October 2021 to offer to make payment arrangements with the IRS because he was waiting to receive a bill. He claimed he did not make any payments until March 2022 because he waited until he had a payment arrangement in place with the IRS. He also stated that part of the reason for his delay in resolving his tax filing and payment issues was an IRS backlog and his multiple changes of residences and changes in employment. (Tr. 31-32, 45-50, 53; Answer; GE 1, 2, 6, 7; AE B-J)

Applicant filed a Chapter 7 bankruptcy petition in September 2016. He needed financial assistance because he was underemployed and could not pay his financial obligations, which included child support. He listed about \$24,600 in unsecured claims

in his bankruptcy petition. In March 2017, the bankruptcy judge closed the case without granting a discharge because Applicant had not filed his proof of financial education. Applicant completed his required financial management class in April 2018. The judge reopened the bankruptcy case in April 2018 and granted Applicant a Chapter 7 discharge that same month. (Tr. 28, 30; Answer; GE 1, 2, 4-7)

After he filed Chapter 7 bankruptcy, notwithstanding his delinquent federal taxes, he has been mostly current on his other financial responsibilities with several exceptions. He was ninety-days delinquent on two student loans in September 2016 and July 2017, when he allowed these loans to fall out of a forbearance status. He resolved these student loan delinquencies in September 2017, by having them replaced in forbearance. He was 30 days late on a small credit-card balance in June 2020, which he paid in full in July 2020. He had two delinquent consumer debts of about \$350 each that he resolved in March 2021. (Tr. 28-30, 55; Answer; GE 3-7; AE T)

Applicant has been working and residing in Country A since May 2022. He is currently scheduled to work and live there until May 2023, but may continue there until May 2024. He provided pay stubs showing that he has earned between about \$3,500 and \$6,000 in take home pay every two weeks while he works in Country A. He also earns additional income of about \$11,000 monthly while working in Country A. Given his ability to pay his significant federal tax indebtedness, the lack of delinquencies on the credit reports in the record, his bank account balances, and his testimony to this effect at the time of the hearing, he has enough income while working in Country A to meet his financial obligations and to save money. His parents have indicated their willingness to guarantee any of his income tax delinquencies. (Tr. 33-37, 53-54; Answer; GE 5; AE B-T)

Applicant provided character reference letters from individuals who know him both socially and through work. Some of these individuals hold security clearances. All attest to his trustworthiness, reliability, professionalism, and discretion involving sensitive information. They believe that he should be granted a security clearance. He has completed several training courses relevant to the protection of sensitive information. (Tr. 31; Answer)

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 are potentially applicable in this case:

- (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.

In 2016, Applicant filed a Chapter 7 bankruptcy petition because he was unable to meet his financial obligations. Beginning in 2012, he did not timely file federal income tax returns for several years, despite being required to do so. He owed significant delinquent federal income taxes for several tax years. The evidence is sufficient to raise the above disqualifying conditions.

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;
- (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.

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 most of his outstanding federal income tax returns, he has not filed his federal income tax return for the 2012 tax year. He has paid his delinquent taxes for tax years 2013 onward. Even if we were to assume for the sake of argument that the IRS no longer required him to file his 2012 federal income tax return, he would only have been current on the remainder of his delinquent taxes since November 2022. When contrasted with the number of years that Applicant has not met his financial obligations, this several-month time period does not constitute a track record of financial responsibility. Given the lack of evidence relating to his fulfillment of federal tax responsibilities for the 2012 tax year and the lack of a track record of financial responsibility, I am unable to find that his financial issues are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant failed to timely file his federal income tax returns because he was “lazy,” and did not follow up with his tax preparers and the IRS to insure that they had been appropriately filed. 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). He owed delinquent taxes for several years because he did not timely file his federal income tax returns, because he did not withhold enough income to satisfy his tax obligations, and because he waited for the IRS to contact him with a bill. These conditions that caused his tax deficiencies were largely within his control. AG ¶ 20(b) does not apply.

Applicant received financial counseling through the mandatory bankruptcy course in 2018. For ¶ 20(c) to apply, he must also show that there are clear indications that the problem is being resolved or is under control. With the exception of the 2012 tax year, he has filed and paid his delinquent income tax returns and federal taxes. With several exceptions, he has stayed current on his consumer financial responsibilities. He has shown that while he is working in Country A, he has the income to pay his debts. However, the aforementioned insignificant period of time in which he has been (mostly) delinquency free detracts from the applicability of this mitigating factor. AG ¶ 20(c) partially applies.

Applicant has repaid all of his delinquent federal taxes. While he claimed that other factors led to the timing of these payments, he made them well after his clearance process began. 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). AG ¶ 20(d) partially applies.

Except for the 2012 tax year, Applicant arranged with the IRS to file his delinquent income tax returns and pay his taxes, and complied with these arrangements. AG ¶ 20(g) partially applies.

While three of the mitigating conditions partially apply, application of a particular mitigating condition does not necessarily establish overall mitigation. Applicant has only once (in 2021) timely filed his federal income tax returns since 2012. This one year of compliance falls short of providing sufficient evidence of reform and rehabilitation. He has not provided sufficient evidence that he filed his 2012 federal income tax return. He has not established a track record of financial responsibility. Overall, he has not met his burden of providing mitigating evidence.

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 references, his training, and his military service, 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
Subparagraphs 1.a-1.e:	Against Applicant
Subparagraph 1.f:	For 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