



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



In the matter of:)	
)	
)	ISCR Case No. 22-00656
)	
)	
Applicant for Security Clearance)	

Appearances

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

02/08/2023

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On September 6, 2022, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective June 8, 2017 (AG).

On September 30, 2022, Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing. Department Counsel prepared the Government’s File of Relevant Material (FORM), which was sent to Applicant on

November 22, 2022. The evidence included in the FORM is identified as Items 4-8 (Items 1-3 include pleadings and transmittal information). The FORM was received by Applicant on December 1, 2022. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit any response. The case was assigned to me on January 26, 2023.

Procedural Issue

In the FORM sent to Applicant in November 2022, Department Counsel moved to amend the SOR to conform to the proof. That proposed amendment would add allegation ¶ 1.o using the following language:

You failed to file, as required, [State X] income tax returns for at least tax years 2015 through 2021. As of the date of this FORM, the income tax returns remain unfiled.

Applicant did not reply to the FORM and therefore he did not admit or deny the proposed amended allegation. I consider his failure to respond as a denial of the allegation. Pursuant to the Directive ¶ E.3.1.13, the motion to amend the SOR as identified above is granted.

Findings of Fact

Applicant admitted all of the SOR allegations (¶¶ 1.a-1.n), except for ¶ 1.o. His admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 56 years old. He has worked for his current employer, a defense contractor, since August 2020, as a subject matter expert. Since 2008, he has worked for various defense contractors. He had short periods of unemployment (March-April 2020; July-September 2018) in the past. He is a high school graduate and has taken some college courses. He is married for the second time and has two adult children. He has held a security clearance in the past. (Item 4).

The SOR alleged Applicant failed to timely file his 2015 through 2021 federal income tax returns, as required, and that he failed to timely file his 2015 through 2021 state income tax returns (¶¶ 1.a, 1.o). Applicant admitted in his August 2022 answers to interrogatories that he failed to file his 2015-2021 federal and state income tax returns. He also admitted in his SOR answer that he failed to file his federal tax returns for the same time period. (Items 3, 5)

Applicant provided documentation showing that he hired a tax resolution company (Tax Firm) in July 2022 to file his delinquent federal tax returns for tax years 2015-2021. While he or the Tax Firm requested and received "W-2 Wage and Tax Statements" for years 2015-2021 from the IRS, there is no documentary evidence showing that Applicant's delinquent returns were filed. Applicant indicated that his plan

was to file his federal tax returns first then start working on his state tax returns. There is no documentary evidence showing that he filed his state returns. His tax filing issues are unresolved. (Item 5; SOR answer)

The SOR alleged Applicant owed nine delinquent medical accounts totaling approximately \$2,600. (¶¶ 1.e-1.k, 1.m-1.n) Applicant admitted owing these debts in his SOR answer. The debts are also supported by listings as delinquent debts in credit reports from February 2021, September 2021, and November 2022. Applicant claimed he was unaware of these medical debts when he was interviewed in March 2021. These debts remain unresolved. (Items 5-8, SOR answer)

The SOR also alleged Applicant owed four delinquent consumer accounts totaling approximately \$9,200. (¶¶ 1.b-1.d and 1.l) He admitted these debts in his background interview and in his SOR answer. The debts are also supported by listings as delinquent debts in credit reports from February 2021, September 2021, and November 2022. The November 2022 credit report reflects that Applicant made payments toward SOR debts ¶¶ 1.b and 1.c., reducing the balance owed for both debts. An earlier credit report reflects that ¶ 1.l was paid. Of these consumer debts, only SOR ¶ 1.d is unresolved. (Items 3, 5-8)

Applicant cited a number of reasons leading to his financial difficulties. These reasons include having to rely on short-term disability pay in 2017 or 2018, where he received 60% of his normal pay; unemployment from July 2018 to September 2018, due to a layoff; and unemployment from March to April 2020, due to a job termination. (Items 4, 5)

Applicant's financial worksheet that he completed in August 2021 reflects a net monthly income of \$4,587 and total monthly expenses of \$4,121, leaving a monthly remainder of \$466. Other than his hiring of the Tax Firm to file his tax returns, there is no evidence of financial counseling. (Items 3, 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 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.

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 about 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

AG ¶ 18 expresses the security concerns for 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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (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.

Applicant failed to timely file his 2015-2021 federal and state income tax returns and there is no evidence that he filed them. He also has delinquent medical and consumer debts, some of which remain unpaid or unresolved. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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.

Applicant's debts are recent and remain unresolved. His federal and state tax returns remain unfiled. He did not provide sufficient evidence to show that his financial problems are unlikely to recur. AG ¶ 20(a) does not apply. He had several problems, such as unemployment and having to rely on disability income, at a reduced rate of 60%. However, the evidence does not support a finding that he has taken responsible actions to address his debts or timely file his federal and state tax returns. AG ¶ 20(b) does fully apply.

Applicant failed to document any efforts he made to resolve or pay his delinquent medical debts. He paid one consumer debt and is making payments on two other debts. Those debts are resolved in his favor. Other than hiring Tax Firm to work on filing his tax returns, there is no evidence of financial counseling and no evidence that his financial conditions are under control. He has not shown a good-faith effort to address his debts or his federal and state tax issues. AG ¶¶ 20(c), 20(d), 20(g) and do not apply, except as noted above.

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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I considered his medical and unemployment issues, but I also considered his lack of progress in resolving his debts, and his failure to timely file his 2015-2021 federal and state income tax returns. Applicant has not established a track record of financial responsibility.

Overall, the record evidence leaves me with 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.

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.d-1.k, 1.m-1.o:	Against Applicant
Subparagraphs 1.b-1.c, 1.l:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, 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.

Robert E. Coacher
Administrative Judge