



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



In the matter of:)
)
) ISCR Case No. 22-00778
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: Sean M. Bigley, Esq.

01/31/2023

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On July 19, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on August 3, 2022, and requested a hearing before an administrative judge. The case was assigned to me on October 28, 2022.

The hearing convened as scheduled on December 5, 2022. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) A through H, which were admitted without objection.

Findings of Fact

Applicant is a 52-year-old employee of a defense contractor. He has worked for his current employer since 1999. He has an associate's degree earned in 1996 and additional education and certifications. He married in 2001 and divorced in 2011. He has no children. (Transcript (Tr.) at 12-13, 22; GE 1)

Applicant has a history of tax issues. He did not file his federal and state income tax returns for tax years 2010 through 2016, 2018, and 2019 when they were due.¹ He filed his returns for tax year 2017 on time, but the IRS thought that there could have been identity theft. This was likely because Applicant legally changed his name in 2015. He accepted responsibility for his tax failures, which he attributed to poor organizational skills, mild depression, and procrastination. He described a bad period of his life in which he went through a divorce, he was balancing work, and he was taking care of his aging parents. He asserted that he never intended to shirk his responsibility to pay his taxes. (Tr. at 14-15, 20-27; Applicant's response to SOR; GE 1; AE G, H)

Applicant reported his failure to file his federal and state tax returns from 2014 to 2016, 2018, and 2019 on a Questionnaire for National Security Positions (SF 86) that he submitted in October 2020. He gave "procrastination" as the reason, and he wrote that they were "[c]urrently being resolved." (GE 1)

Applicant retained a tax professional in 2020. His federal and state tax returns for 2010 through 2016 and 2018 through 2020 were filed in May 2021. He estimated that, with penalties and interest, he paid about \$10,000 in taxes for the tax years 2010 through 2013. His federal tax liability for 2014 was originally \$12,713. He had \$8,907 withheld from his pay, leaving about \$3,806 owed if he filed his return and paid his taxes on time. With penalties and interest, the balance grew to \$7,294, which he paid in October 2022. (Tr. at 16-19, 22-23, 28-30; Applicant's response to SOR; GE 2-4; AE E, H)

Applicant's federal tax liability for 2015 was originally \$12,363. He had \$11,747 withheld from his pay, leaving about \$616 owed if he filed his return and paid his taxes on time. With penalties and interest, the balance grew to \$1,228, which he paid in October 2022. (AE H)

Applicant would have been due a federal refund of \$2,101 for tax year 2016 if his tax return had been filed within three years of the due date. He received refunds from the IRS of \$1,289 for tax year 2018; \$851 for tax year 2019; and \$1,434 for tax year 2020. He filed his returns for 2021 on time. He owed the IRS \$805 for tax year 2021, which he paid on time with his return. He does not owe the IRS or his state any taxes. (Tr. at 19; AE F, H)

¹ The SOR did not allege any tax issues before tax year 2014. Any matter that was not alleged in the SOR cannot be used for disqualification purposes. It may be considered in the application of mitigating conditions and in the whole-person analysis.

Applicant stated that the bad period in his life is over. He researched ways to become more organized. He now relies on a tax professional to file his returns. His finances are otherwise in good shape. He stated that he will continue to file his tax returns and pay his taxes on time. He requested a conditional clearance with acknowledgment that failure to file his tax returns and pay his taxes on time could result in the loss of his security clearance. (Tr. at 16-19, 27; AE A, D)

Applicant submitted documents and letters attesting to his excellent job performance and strong moral character. He is praised for his work ethic, reliability, trustworthiness, judgment, expertise, professionalism, and willingness and ability to protect classified information. (AE B, C)

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.

Applicant did not file his 2014 through 2016, 2018, and 2019 federal and state income tax returns when they were due. AG ¶ 19(f) is applicable. Applicant filed his 2017 federal and state income tax returns on time. AG ¶ 19(f) is not applicable to tax year 2017. The language in the allegations referring to tax year 2017 is concluded for Applicant.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following is potentially applicable:

(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 accepted responsibility for his tax failure, which he attributed to poor organizational skills, mild depression, and procrastination. He described a bad period of his life in which he went through a divorce, he was balancing work, and he was taking care of his aging parents. All of the old returns were filed in May 2021 and all of his past-due taxes were paid in October 2022. AG ¶ 20(g) is applicable to the filed income tax returns, but that does not end the discussion.

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). This is true even when the returns are eventually filed.

Applicant asserted that he never intended to shirk his responsibility to pay his taxes. Whether he intended to or not, that is what he did. He owed about \$10,000 for tax years 2010 through 2013; \$7,294 for 2014; and \$1,228 for 2015. He did not finish paying those taxes until October 2022.

Applicant's failure to fulfill his duty to file his income tax returns on time continues to raise doubts about his judgment, reliability and willingness to follow rules and regulations. The mitigation provided by the filed returns is insufficient to overcome the years of Applicant shirking his responsibility to this country to file his tax returns and pay his taxes. 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 incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's character evidence.

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.²

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.b:	Against Applicant (except for tax year 2017, which is found for Applicant)

Conclusion

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

Edward W. Loughran
Administrative Judge

² The adjudicative guidelines give me the authority to grant conditional eligibility "despite the presence of issue information that can be partially but not completely mitigated, with the provision that additional security measures shall be required to mitigate the issue(s)." I have not done so as I have concluded a conditional clearance in this case is not warranted.