



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



In the matter of:)
)
) ISCR Case No. 22-01246
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Driskill, Esq., Department Counsel
For Applicant: *Pro se*

01/25/2023

Decision

Dorsey, Benjamin R., Administrative Judge:

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

Statement of the Case

On August 3, 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 September 5, 2022, and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on September 26, 2022. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was advised that he had 30 days from his date of receipt to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on October 11, 2022. As of November 17, 2022, he had not responded. The case was assigned to me on December 28, 2022. The Government exhibits included in the FORM, marked as Items 1-4, are admitted in evidence without objection.

Findings of Fact

Applicant is a 39-year-old employee of a government contractor for whom he has worked since 2003. He earned a high school diploma in 2001 and a technical certificate in 2007. He has been married since 2006 and has three children, ages 15, 14, and 3. (Item 3)

The SOR alleged two years of unfiled federal tax returns and related past-due tax debt. Applicant did not timely file his federal income tax returns for the 2017 and 2018 tax years, despite being required to do so (SOR ¶ 1.a). He owed delinquent federal income taxes in the approximate amount of \$7,800 for the 2017 tax year (after an offset for a refund from a subsequent tax year) (SOR ¶ 1.b). (Items 1-4)

Applicant filed his late income tax return for the 2017 tax year in February 2020. He filed his late federal income tax return for the 2018 tax year in May 2022. He timely filed his 2019 and 2020 federal income tax returns. He originally owed about \$16,000 in delinquent federal taxes for the 2017 tax year, but he received a credit of about \$8,000 in April 2021, because of an offset from his income tax refund for the 2020 tax year. He claimed that he hired a tax professional on an unspecified date to assist him with his taxes and believed that he will not end up owing any delinquent taxes. He provided no documentary evidence to corroborate his belief that he will not owe delinquent federal taxes, or to rebut the information contained in the 2017 IRS tax account transcript. (Items 1-4)

Applicant claimed that he failed to timely file his 2017 and 2018 federal income tax returns because he did not think he would have enough money to pay the taxes he would owe. He also claimed that his purchase of a new house and resultant move contributed to him missing the aforementioned income tax filing deadlines. He claimed that he has been filing his income tax returns for 23 years and has not had any tax issues other than for these two years. He does not currently have a payment plan in place with the IRS, but plans to make one in the future if he still owes delinquent taxes. In May 2022, he provided a written budget that reflected a monthly surplus of almost \$5,000. He also claimed that he sold his house and used a portion of the proceeds to pay off several of his debts. Applicant did not respond to the FORM, so more recent information about his finances is not available. (Items 1-4)

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 within DOD 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.

Applicant did not timely file federal income tax returns for two years despite being required to do so. He has owed delinquent federal taxes for about five 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).

Applicant has filed his delinquent federal income tax returns and also timely filed two additional years of income tax returns. However, he still owes delinquent federal taxes. He does not have a payment arrangement in place with the IRS to address these delinquent taxes. His financial issues are ongoing and I cannot find they are unlikely to recur. AG ¶ 20(a) applies to his delinquent income tax filings, but does not apply to his delinquent taxes, because they are ongoing and not resolved.

Applicant failed to timely file his 2017 and 2018 federal income tax returns because he did not believe he could afford to pay his taxes and he sold his home and moved. Neither of these causes were due to circumstances beyond his control. He could have withheld sufficient wages to offset his federal tax obligations, as he claimed to have done in the past. Likewise, he was arguably in control of when he moved. Furthermore, moving does not reasonably excuse two straight years of not filing income tax returns. AG ¶ 20(b) does not apply.

Applicant claimed that he sought assistance from a tax professional. However, he still owes delinquent federal taxes with no payment plan in place. Therefore, he has not provided sufficient evidence that his financial issues are being resolved or are under control. AG ¶ 20(c) does not apply.

Other than an offset, Applicant has not made payment on his delinquent federal taxes. He does not have a payment plan in place with the IRS for his outstanding past-due tax debt. AG ¶ 20(d) does not apply.

Applicant has now filed his 2017 and 2018 federal income tax returns and has timely filed federal income tax returns for two additional years. I find that he has shown reform and rehabilitation with respect to filing his federal income tax returns. However, he still owes delinquent federal taxes. He does not have an arrangement in place with the IRS to repay them. AG ¶ 20(g) applies to his failure to timely file his federal income tax returns, but does not apply to his delinquent federal taxes.

While two of the mitigating conditions apply to Applicant's failure to timely file income tax returns, none applies to his delinquent taxes. Application of a particular mitigating condition does not necessarily establish overall mitigation. Overall, 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. 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 concern.

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:	For Applicant
Subparagraph 1.b:	Against 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