



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



In the matter of:)
)
) ISCR Case No. 20-03178
)
Applicant for Security Clearance)

Appearances

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

01/26/2023

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 December 18, 2020, 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 December 3, 2021 (Answer), and requested a hearing before an administrative judge. On March 4, 2022, Department Counsel amended the SOR to include an additional allegation under Guideline F. Applicant responded to the SOR amendment on October 5, 2022 (Answer to Amendment). The case was assigned to me on September 2, 2022.

I convened the hearing as scheduled on November 10, 2022. At the hearing, I admitted Government Exhibits (GE) 1 through 4 in evidence without objection. Applicant testified, but did not submit documentary evidence. I received the transcript (Tr.) on November 18, 2022.

Findings of Fact

Applicant is a 54-year-old employee of a government contractor. He has worked in the same position for several different government contractors since about August 2015. He was awarded a bachelor's degree in 1990. He has been married since 1997. He has five children, four of whom are minors. He served on active duty in the U.S. Air Force from 1986 until December 2014. (Tr. 21-22; GE 1)

In the SOR, the Government alleged Applicant's six delinquent consumer and medical debts totaling approximately \$38,000 (SOR ¶¶ 1.a-1.f). These delinquencies consist of a medical account, credit-card accounts, auto loans, and a personal loan. The Government also alleged that Applicant did not timely file his federal and state income tax returns for the 2015 through 2018 tax years, despite being required to do so (SOR ¶¶ 1.g and 1.h). Finally, it alleged that he owed delinquent federal income taxes in the approximate amount of \$13,450 for the 2015 through 2018 tax years (SOR ¶ 1.i). In his Answer and Answer to Amendment, he admitted all of the SOR allegations with additional comment. I have adopted his admissions as findings of fact. (SOR; Answer; Answer to Amendment)

The delinquent medical account for \$244 listed in SOR ¶ 1.a has not been resolved. This account became delinquent in approximately May 2017. Applicant claimed that he contacted the creditor about this debt and paid it over the phone approximately a year ago. He contacted the creditor after the SOR was issued. He did not provide corroborating documentation regarding this payment. (Tr. 32-38, 41, 77; Answer; GE 1-4)

The delinquent online credit card for \$490 listed in SOR ¶ 1.b has been resolved. Applicant opened this account in August 2019, but fell behind on payments in 2020 because he had other expenses to cover. In approximately March 2021, he contacted the creditor and paid approximately \$456 to settle the account for less than the full balance. (Tr. 41-42; Answer; GE 2-4)

The auto loan delinquent for \$746 with a total balance of approximately \$12,861 listed in SOR ¶ 1.c has been resolved. Applicant opened this account in about August 2015 for the purchase of a used vehicle. He became delinquent on the account in about November 2020 because he did not have enough income to make the payments on it. In approximately November 2021, his wife contacted the creditor and paid about \$6,000 to settle the account for less than the full balance. (Tr. 41-45, 72-74; Answer; GE 2-4)

The delinquent auto loan for \$29,101 listed in SOR ¶ 1.d has not been resolved. Applicant opened this account in about August 2016 for the purchase of a used vehicle. He fell behind on payments on this account in about September or October 2020 because he did not have enough income to pay all of his financial obligations and the account was charged off. In approximately November 2021, either he or his wife contacted the creditor about this debt and the debt listed in SOR ¶ 1.c. Applicant and his wife claimed that the creditor told them that they could make payments on this debt, but they were not required to because the debt had been written off. He has not made a

payment on this debt after the account was charged off. He acknowledged that he probably should make payments on it. (Tr. 45-49, 73-75; Answer; GE 1-4)

The credit-card account delinquent for \$105 with a total balance of approximately \$3,719 listed in SOR ¶ 1.e has been resolved. Applicant opened this account in about 2008. He has had periods of time when he has been delinquent on the account because of a lack of sufficient funds to pay all of his financial obligations, but manages to catch back up. The account has been current since about November 2021. The status of this account is corroborated by credit reports (Tr. 49-50; Answer; GE 2-4)

The delinquent personal loan for \$4,880 listed in SOR ¶ 1.f has not been resolved. Applicant opened this account in about August 2015 to pay for daily living expenses. The creditor charged off the account in about 2016 when Applicant stopped making payments on it. Applicant claimed that he contacted the creditor about this account in 2018, although he also testified that he did not contact any of the creditors in the SOR until after the SOR was issued in December 2020. Applicant claimed that the creditor acknowledged that the account was “off their books,” so he did not make any payment arrangements or payments on this account. (Tr. 41, 50-53; Answer; GE 1-2)

Applicant failed to timely file his federal and state income tax returns for the 2015 through 2018 tax years, despite being required to do so. He filed all of these late income tax returns in August 2022. He filed his federal and state income tax returns for the 2019 through 2021 tax years in August 2022. He provided no evidence that he had an extension from the IRS or his state tax authority to file any of these income tax returns beyond the deadline. Any adverse information not alleged in the SOR, such as Applicant’s late filing of income tax returns for tax years other than 2015 through 2018 cannot be used for disqualification purposes. It may be considered when assessing the application of mitigating conditions and for the whole-person analysis. (Tr. 17-18, 23-28, 41, 78-79; Answer; GE 1)

Applicant claimed that he failed to timely file his federal and state income tax returns in 2015 because he completed the forms and realized that he owed about \$10,000 in federal taxes. He knew he could not afford to pay that amount, so he procrastinated. He wanted to wait to formulate a plan and to save money, so he did not file. He claimed that prior to 2015, he had always received an income tax refund, but believed that his retirement from the military must have changed his tax status. A similar thought process resulted in his not timely filing his federal and state income tax returns for the 2016 through 2021 tax years. He was worried about not being able to pay his federal taxes, so he procrastinated and avoided filing so as not to draw the attention of the IRS. (Tr. 17-18, 23-29, 41, 78-79; Answer; GE 1)

Applicant owed about \$13,450 in delinquent federal taxes for the 2015 through 2018 tax years. He believed that after the IRS finished calculating his balance after receiving his 2015 through 2021 income tax returns, he would ultimately owe about \$10,000. He provided no documentary evidence to corroborate that he will owe this lesser amount. There is no evidence in the record that he owed any state income taxes. He claimed that he included a form with his late federal income tax filings requesting the

IRS enter into a payment plan with him. He did not provide a copy of this form. He did not request a specific amount to pay to the IRS, but believed that he can pay about \$1,200 per month. His plan is to wait for the IRS to get back to him about his payment arrangement request and then make the required payments. (Tr. 17-18, 23-29, 58, 78-80; Answer; Answer to Amendment; GE 1)

Applicant claimed his financial problems with respect to his consumer and medical debts were attributable to several causes. In 2016, he and his family had to move on short notice because their landlord was not paying the mortgage on their residence and the property was foreclosed upon. This foreclosure resulted in Applicant moving twice in about a year. The difficulty and expense of his moves were exacerbated by his need to accommodate a large family and a number of farm animals. His resultant rent of \$2,300 per month for his current residence was relatively high for the area. He has operated a working dairy farm that loses a significant amount of money. His wife was a stay-at-home mother until 2020 and then was in and out of work until October 2022. Finally, he blames inflation for his rising costs. Given his inability to pay his financial obligations, he has not presented sufficient evidence to show that he has enough income to cover his expenses. (Tr. 14, 29-31, 65-66, 71, 75-76)

Applicant has earned about \$140,000 annually in salary since about 2015. He has also received about \$4,300 per month in military retirement. Applicant's wife has contributed to the family income when she has been employed. She worked for about six months in 2020, and then was unemployed until about August 2021. She was employed again beginning in August 2021 for about six months. From then until October 2022, she was either unemployed or worked part time for a friend. As of October 2022, she started a new job and has earned about \$1,000 to \$1,200 every other week. Applicant claimed that now that his wife has income, he is able to save some money. He claimed that he is also cutting back on the expenses of his farm, but did not explain how he is doing so. (Tr. 15, 21-22, 65-66)

Applicant's regular monthly expenses are the aforementioned \$2,300 in rent, \$300 to \$500 per month for electricity, about \$1,000 a few times per year for propane, \$2,500 per month for animal feed, \$100 per month for veterinary bills, and about \$400 per month for cell phones. He also spends about \$1,200 to \$1,400 per month on groceries. He has about \$400 in his checking account and no money in savings. He has about \$10,000 to \$11,000 in a retirement account. His wife has been handling the budget, but they do not have a set, written budget. He claimed that they are working on establishing one. Applicant attended credit counseling consisting of two to three in-person meetings totaling two to two and one-half hours total in 2016 or 2017. (Tr. 31, 53-58, 60-62, 65-68, 76)

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.

Applicant has had financial issues for at least seven years. He has had several delinquent consumer and medical debts. Beginning in 2015, he did not timely file multiple years of federal and state income tax returns, despite being required to do so. He has owed approximately \$13,450 in delinquent federal taxes for several 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.

While Applicant has provided evidence that he has resolved three of the six consumer and medical SOR debts through payments, and he has filed his delinquent income tax returns, he has not provided sufficient evidence that the remaining debts are being resolved in a meaningful way. He has significant unaddressed consumer debt and delinquent federal taxes. As he does not know the amount the IRS will require in payment arrangements, he has not presented sufficient evidence to show he will be able to afford them. His financial issues are ongoing and I cannot find they are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant's consumer and medical delinquencies arose, at least partially, because of unforeseen moves, his wife's unemployment, and inflation. These conditions were beyond his control. To avail himself of mitigation under AG ¶ 20(b), he must also show that he acted responsibly under the circumstances with respect to his delinquent consumer and medical debts. While he has settled some of his SOR debts through payment, he did so after having received the SOR. 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). He still has three unaddressed consumer and medical debts combined. With respect to the medical debt listed in SOR ¶ 1.a, there is no documentation in the record to corroborate the payment of this debt. It is reasonable to expect Applicant to present documentation about the resolution of specific debts. See, e.g., ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 16, 2016).

Given the timing of the resolution of his satisfied debts and the amount of his still unresolved delinquent consumer and medical debt, I cannot find that he has acted responsibly under the circumstances with respect to that debt. Moreover, his failure to withhold sufficient wages to offset his federal tax obligations and his failure to timely file his federal and state income tax returns were not due to circumstances beyond his control. AG ¶ 20(b) does not apply.

While Applicant sought and received financial counseling in 2016 or 2017, many of his financial delinquencies arose after he received it. Given the amount of his still unresolved delinquent debt, he has not provided sufficient evidence that his financial issues are being resolved or are under control. AG ¶ 20(c) does not apply.

Applicant has not provided evidence that he has made payments (or plans to make payments) on all of his delinquent debts. With respect to the debts that he has paid, he began to address those delinquent debts after the SOR was issued and therefore failed to show that his effort to resolve those debts was made in good faith. AG ¶ 20(d) does not apply.

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 his outstanding federal and state income tax returns, he still owes delinquent federal taxes. Moreover, his late filing of his delinquent income tax returns does not end the mitigation analysis. He must also show reform and rehabilitation with respect to his income tax return filing. He has not provided sufficient evidence of reform and rehabilitation, as he has yet to file a timely income tax return since 2014. He does not have an arrangement in place with the IRS to repay them. AG ¶ 20(g) does not apply.

None of the mitigating conditions applies. 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 have considered Applicant's lengthy 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
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Subparagraphs 1.a- 1.i:	Against Applicant
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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