



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



In the matter of:)
)
) ISCR Case No. 22-00055
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

01/27/2023

Decision

PRICE, Eric C., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On June 10, 2022, the Department of Defense Consolidated Adjudications Facility issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

On June 27, 2022, Applicant answered the SOR, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM) dated August 3, 2022, including documents identified as Items 1 through 4. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of

receipt of the FORM. Applicant submitted no response. There were no objections by Applicant, and all Items are admitted into evidence. The case was assigned to me on December 2, 2022.

Findings of Fact

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 37 years old. He earned an associate's degree in September 2009 and attended college in 2011. He has never been married and has one child (8 years old). He has been employed by federal contractors in various information technology positions since September 2015, and has worked for his current employer since March 2016. He was unemployed from December 2014 to January 2015. (Item 3)

The SOR alleges that Applicant failed to file, as required, federal income tax returns for tax years 2016 through 2018, and 2020 (SOR ¶ 1.a), state income tax returns for tax years 2017, 2018, and 2020 (SOR ¶ 1.b), and that he failed to pay, as required, his Federal income taxes for tax year 2014 (SOR ¶ 1.c). (Item 1) In Applicant's answer to the SOR, he admitted all SOR allegations with explanations. (Item 2)

In his August 2018 security clearance application (SCA), Applicant reported that he forgot to file federal and state income tax returns for tax year 2017. (Item 3 at 40) During background interviews with a government investigator in September 2019, he said that he had not filed federal and state income tax returns for tax years 2017 and 2018, and had not requested filing extensions. (Item 4 at 5) He said that he had attempted to file his taxes in February 2019 "on the IRS website, but he got confused." He stated his intent to hire an accountant and to file the delinquent income tax returns. (Item 4 at 5 and 6) During a September 18, 2020 interview, he reported that he had filed federal and state income tax returns for tax years 2017 to 2019 in July 2020. The investigator told Applicant that he had five days to provide tax account transcripts. (Item 4 at 7) During a September 21, 2020 interview, Applicant reported that his online federal tax account transcript reflected that his 2018 income tax return had not been filed. (Item 4 at 8)

In response to DOHA interrogatories in March 2022, Applicant submitted federal income tax account transcripts dated in March 2022 reflecting that he had not filed income tax returns for tax years 2016 through 2018 and 2020, and that credits from his overpayment of taxes in tax year 2019 were applied to arrearages for tax years 2012 and 2014. (Item 4 at 12-15) In his narrative response to inquiries, he reported that he had filed federal income tax returns for tax years 2015 through 2019; that he owed an unknown amount for tax year 2014, and had "setup a payment arrangement to get it paid." (Item 4 at 10-11) He reported that he had filed state income tax returns for tax years 2015 through 2019, and that he had not filed state income tax returns for tax years 2020 and 2021, but planned to do so. (Item 4 at 20)

In Applicant's June 2022 answer to the SOR, he admitted failing to file his 2016 federal income tax return, claimed that he filed returns for tax years 2017 and 2018, and said that he would be filing returns for tax years 2016 and 2020. (SOR ¶ 1.a) He admitted that he had not timely filed state income tax returns for tax years 2017, 2018 and 2020, claimed that he had since filed returns for tax years 2017 and 2018, and said that he would file his 2020 and 2021 returns. (SOR ¶ 1.b) He admitted that he had not paid federal income taxes due for tax year 2014 (SOR 1.c), and indicated that he would "go to the IRS website and start a payment arrangement to get the taxes paid." (Item 2 at 2) He provided documentary evidence that in July 2020, a tax service prepared his federal and state income tax returns for tax years 2017 and 2018, and that he and the tax preparer signed those returns. (Item 2 at 3-42) He submitted documents including his declaration and signature authorization for the tax preparer to electronically file the subject returns and a signed tax preparer's "Certification and Authentication" confirming federal and state income tax returns for tax years 2017 and 2018 were electronically filed by the tax preparer. (Item 2 at 11, 15, 32, 36) He did not submit documentary evidence his 2017 and 2018 income tax returns were received or processed by federal or state tax authorities, or that he received anticipated refunds for tax years 2017 and 2018. (Item 2 at 6, 11, 13-15, 19, 21, 27, 29, 32-36, 40-42)

Applicant submitted a personal financial statement reflecting a net monthly salary of approximately \$5,200, monthly expenses of approximately \$1,500, and a net monthly remainder of approximately \$3,641. (Item 4 at 22) He did not provide documentary evidence of his current financial budget, savings or expendable income.

Policies

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 as to potential, rather than actual, risk of compromise of classified information.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

"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, and has the ultimate burden of persuasion as to obtaining a

favorable clearance decision.” Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988); see AG ¶ 2(b).

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), any doubt will be resolved in favor of the national security.” 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

The security concern relating to the guideline 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. 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.

Applicant’s admissions and the evidence in the FORM establish the disqualifying condition under this guideline in AG ¶ 19(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.”

The following mitigating conditions under AG ¶ 20 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;

(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 admitted that he failed to timely file and provided no documentary evidence that he filed federal income tax returns for tax years 2016 and 2020, or a state income tax return for tax year 2020. His claims that he filed federal and state income tax returns for tax years 2017 and 2018 are not fully corroborated by the documentary evidence he provided. He retained a tax preparer to prepare and file his federal and state income tax returns for 2017 and 2018, and the tax preparer certified those returns were electronically filed in July 2020, but Applicant's federal tax account transcripts dated in March 2022 show that no federal income tax returns were filed for tax years 2017 and 2018. He also admitted that he failed to pay, as required, federal income taxes for tax year 2014. He claimed that he had or would enter a payment arrangement with federal tax authorities to pay those delinquent taxes, but produced no documentary evidence that he had done so.

AG ¶ 20(a) is not established. Applicant's failure to timely file income tax returns and to pay annual income taxes due occurred frequently, is ongoing, and was not under circumstances making recurrence unlikely.

AG ¶ 20(b) is not established. Applicant's tax preparer's apparent failure to file his federal income tax returns for tax years 2017 and 2018 were conditions largely beyond his control. However, he has not acted responsibly. He did not begin to address his failure to file income tax returns for tax years 2017 and 2018 until July 2020, almost two years after reporting his failure to file tax year 2017 returns in his SCA, and more than 10 months after telling a Government investigator that he had not filed income tax returns for tax years 2017 and 2018. And he has not reported or provided documentary evidence of any action he took after learning in September 2020, that his federal tax account transcript reflected no federal income tax return had been filed for tax year 2018. He presented no documentary evidence to corroborate claims that he filed federal income tax returns for tax years 2016 and 2020, or a state income tax return for tax year 2020. (SOR ¶¶ 1.a and 1.b). He provided insufficient documentary evidence to corroborate claims that he entered into an agreement to pay delinquent federal income taxes for tax year 2014. (SOR ¶ 1.c).

AG ¶¶ 20(d) and 20(g) are not established with respect to the delinquent federal tax debt for tax year 2014. (SOR ¶ 1.c) Applicant presented insufficient documentary evidence to corroborate claims that he made arrangements to pay his delinquent federal income taxes. The only documentary evidence of any payment on those delinquent taxes

is from his 2019 federal tax account transcript which reflects that a portion of his overpayment was applied to his tax year 2014 arrearages by federal tax authorities.

AG ¶ 20(g) is not established for the delinquent federal income tax returns and unpaid taxes alleged in SOR ¶¶ 1.a and 1.c. Applicant claimed and presented documentary evidence that a tax preparer certified that in July 2020 he had electronically filed delinquent income tax returns for two of the four tax years alleged in SOR ¶ 1.a (tax years 2017 and 2018). However, he also provided tax account transcripts dated in March 2022 that reflected no federal income tax returns had been filed for tax years 2016 through 2018, and 2020. I find the documentary evidence insufficient to conclude that Applicant's income tax returns were filed with federal tax authorities for tax years 2016 through 2018, and 2020. He also provided insufficient evidence that he paid or made arrangements to pay delinquent tax year 2014 taxes. A security clearance adjudication is not a tax-enforcement procedure. It is an evaluation of an individual's judgment, reliability, and trustworthiness. The fact that he attempted to file some past-due returns "does not preclude careful consideration of [his] security worthiness based on longstanding prior behavior evidencing irresponsibility." ISCR Case No. 12-05053 at 5 (App. Bd. Oct. 30, 2014).

AG ¶ 20(g) is partially established for the delinquent state income tax returns. Applicant claimed and presented documentary evidence that a tax preparer prepared and filed delinquent state income tax returns for two of the three tax years alleged in SOR ¶ 1.b (tax years 2017 and 2018), and that the tax preparer certified that those returns were filed electronically in July 2020. However, he provided insufficient evidence that he filed his tax year 2020 state income tax return.

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 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered that Applicant is 37 years old, earned an associate's degree in 2009 and later attended college. I considered that he has been employed by federal contractors since September 2015, has worked for his current employer since March 2016, and was unemployed from December 2014 to January 2015. However, he is responsible for ensuring his federal and state income tax returns are timely filed and that income taxes due are paid. He failed to file multiple federal and state income tax returns, failed to timely file two state income tax returns, and failed to pay all taxes due.

Applicant's failure to comply with the fundamental legal obligation to timely file income tax returns and to pay his taxes raises significant security concerns. "Indeed, the Directive cites failure to file returns as a disqualifying condition in and of itself, irrespective of whether the underlying taxes have actually been paid, as through withholding, etc." ISCR Case No. 15-03019 at 4 (App. Bd. Jul. 5, 2017). "A security clearance represents an obligation to the Federal Government for the protection of national secrets [and] failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information." ISCR Case No. 14-03358 at 2 (App. Bd. Oct. 9, 2015).

Although there is some evidence in mitigation, Applicant failed to meet his burden of persuasion and the record evidence leaves me with questions and doubts as to his eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised 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.c:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric C. Price
Administrative Judge