



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



In the matter of:)
)
) ISCR Case No. 20-03131
)
Applicant for Security Clearance)

Appearances

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

04/06/2023

Decision

RICCIARDELLO, Carol G., 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 August 1, 2021, the Department of Defense (DOD) issued 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; 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.

Applicant answered the SOR on March 29, 2022, and he 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), and Applicant received it on October 24, 2022. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 5 (Item 1 is the SOR.) Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. The case was assigned to me on January 26, 2023.

Findings of Fact

Applicant admitted all of the SOR allegations with explanations. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant 63 years old. He earned a bachelor's degree in 1981 and a master's degree in 1997. He married in 1983 and has an adult child. He has lived in the same house since 1999. He has been steadily employed since 2005, except in 2013 he was unemployed from March to May, and in 2015 he was unemployed from June to August. He received \$24,000 in severance pay after losing his job in 2013. He has been employed by his present employer since August 2015. (Items 3, 4)

Applicant completed a security clearance application (SCA) in November 2015. In it he disclosed he failed to pay his 2013 federal income taxes due to "temporary financial hardship due to unemployment." He stated he owed the IRS \$24,581. He said he contacted the IRS to make arrangements. He also disclosed he failed to pay his 2014 state income taxes due to "financial hardship during work layoff" but he paid the debt in September 2015. (Item 3)

In February 2016, Applicant was interviewed by a government investigator. He told the investigator about his unemployment in 2015 and that he received a severance package, and he did not have financial difficulties during this period but did have some when he was unemployed in 2013. (Item 4)

Applicant told the investigator that he also owed federal income taxes for tax years 2012, 2013, and 2014. He was unable to pay them because he was earning less than he was accustomed to. He said he contacted the IRS in August 2015 to establish a payment plan. He did not explain if an installment agreement was executed. He said he paid the IRS \$200 a month starting in August 2015 but stopped paying in October 2015 because he was paying other bills. He intended to resume the \$200 payments. He told the investigator that he attributed his financial problems to changing jobs and being laid off in 2010. His SCA reflects he was laid off in October 2010 and started a new job in November 2010. He told the investigator he had no intention to fail to pay his taxes in the future. (Items 3, 4)

The investigator also discussed with Applicant his delinquent student loans. Applicant explained he had cosigned student loans for his daughter beginning in 2005 and they had been past due since about 2010. He could not pay them because he had a lower income. He had no idea when they went to collection. He said they were current in 2014 and the initial balance owed of approximately \$80,000 was reduced to \$70,000.

SOR ¶ 1.c alleges Applicant is indebted to his state higher education authority for an account in collection in the approximate amount of \$125,848. In his answer to the SOR, Applicant admitted the debt and stated “I admit, and I am working to negotiate a payment plan.” No evidence was provided to show he made any payments or has a plan to resolve this debt. The debt is reflected on his April 2021 credit report. (Items 4, 5)

The SOR alleges Applicant owes delinquent federal income taxes for tax years 2010 through 2018 in the amount of \$47,263 (SOR ¶ 1.a). In March 2021, Applicant responded to government interrogatories and provided tax transcripts from March 2021 and an IRS installment agreement summary from January 2021, which reflects the following:

2010-balance owed \$2,320
2011-balance owed \$13,450
2012-balance owed \$3,001
2015-balance owed \$3,179
2016-balance owed \$10,188
2017-balance owed \$4,249
2018-balance owed \$10,873

Applicant only provided page 3 of the IRS installment agreement summary. He did not provide any evidence of an approved installment agreement with the IRS or any payments made. In his March 2022 answer to the SOR, Applicant admitted the delinquent federal income tax debts and said “I am working to negotiate a repayment plan. In the meantime, I will make a payment on IRS website of at least \$200 every 2 weeks.”. (Items 2, 4)

The March 2021 tax transcripts show Applicant’s adjusted gross income (AGI) for the following tax years:

AGI for 2013-\$77,327
AGI for 2014-\$111,891
AGI for 2015-\$128,195
AGI for 2016-\$112,122
AGI for 2017-\$100,321
AGI for 2018-\$118,450

The tax transcripts also show that there may have been installment agreements established over the years, but then they stopped. No explanation was provided, and it did not appear that monthly payments were being made. (Item 4)

The SOR alleged Applicant was indebted to his state for delinquent taxes in the amount of \$1,610 (SOR ¶ 1.b). A document from Applicant’s state tax authority reflects he owed state income for tax years 2015 and 2018 for a total of \$1,610. Applicant made a handwritten notation on the document that he mailed a payment of \$420. In Applicant’s

answer to the SOR, he admitted the debt, and said it was paid. He did not provide any documentary proof of payment. (Item 4)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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(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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 as to obtaining 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 as to 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

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (b) unwillingness to satisfy debts regardless of ability to do so;
- (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 is indebted to the federal government for delinquent federal income taxes in the amount of \$47,263 for tax years 2010 through 2012 and 2015 through 2018. He told the government investigator in November 2015 that he owed federal income taxes for tax year 2013 and was making payment arrangements. He said he had no intention of failing to pay his taxes in the future, yet he repeatedly did. He is indebted to his state tax authority in the approximate amount of \$1,610. He is indebted to his state's higher education authority for delinquent student loans in the approximate amount of \$125,848.

There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. 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;
- (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 disclosed in his November 2015 SCA that he had not paid his 2013 federal income taxes but was making arrangements with the IRS to pay them. The evidence supports that he has not paid his 2010 through 2012 and 2015 through 2018 federal income taxes. He claimed he made \$200 payments in 2015 but provided no supporting proof. Despite being aware in 2015 that failure to pay one's taxes was a security concern, he repeated the conduct in 2016, 2017, and 2018. There is some evidence he may have had installment agreements with the IRS, but no evidence he fulfilled those agreements. His January 2021 summary of an installment agreement from the IRS, only shows what he owes for each tax year and not what he was required to pay monthly. He provided no evidence that he executed that agreement or that he is making any payments. He said he paid his state tax debt but did not provide evidence to substantiate his claim. He said he was negotiating a payment plan to resolve the delinquent student loans but did not provide evidence he has done so. His debts are ongoing. There is no evidence of a good-faith effort to repay the delinquent debts. There is no evidence of financial counseling. AG ¶¶ 20(a), 20(c) and 20(d) do not apply.

Applicant attributed his debts to a change in his income after 2010. His SCA reflects he was employed steadily from 2010 until a period of unemployment from March 2013 to May 2013 and June 2015 to August 2015. He did not provide evidence as to what his AGI was in 2010, 2011 or 2012. However, according to his tax transcripts after 2013, his AGI increased and consistently remained over \$100,000. He also told the government investigator that he had received a \$24,000 severance from his employer in 2015, and he had no financial difficulties. Applicant's short periods of unemployment may have impacted his income, but he failed to provide a reasonable explanation for why he repeatedly failed to pay his federal income taxes. He told the investigator in November 2015 that he did not intend to have future issues with paying his taxes. He said he was negotiating a payment plan for the delinquent student loans. No evidence corroborating his assertion was provided. AG ¶ 20(b) has minimal application. Applicant has not acted responsibly in paying his delinquent taxes and student loans.

The evidence is insufficient to conclude Applicant has made arrangements with the appropriate tax authorities to pay the amount owed for his federal and state income taxes. The incomplete IRS installment agreement from January 2021 only shows what he owes and not what the agreement is for or if it was ever executed. Also, in his answer to the SOR, he indicated he was negotiating a payment plan with the IRS, and he was making \$200 payments. He did not provide any evidence to support his statements. AG ¶ 20(g) does not apply.

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.

The DOHA Appeal Board has held that:

Someone who fails repeatedly to fulfill his or her legal obligations 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. 14-01894 at 5 (App. Bd. August 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961). ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).

Applicant has not met his burden of persuasion. 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
Subparagraph 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge