



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



In the matter of:)	
)	
)	ISCR Case No. 22-00157
)	
Applicant for Security Clearance)	

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

03/30/2023

Decision

HYAMS, Ross D., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns arising from his unfiled federal and state income tax returns, and his delinquent federal and state tax debts. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 12, 2021. On April 26, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. He responded to the SOR on September 19, 2022, and requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record in lieu of a hearing.

On September 30, 2022, Department Counsel submitted the Government’s file of relevant material (FORM) including Items 1-7. A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. He received the FORM on November 7, 2022. A response was due on December 7, 2022, and he did not respond to the FORM. The case was assigned to me on January 26, 2023. Items 1 and 2 are the

SOR and Applicant's Answer, which are the pleadings in the case. Items 3-7 are admitted without objection.

Amendment to the SOR

In the FORM, Department Counsel amended the SOR, pursuant to DoD Directive 5220.6 ¶ E3.1.17 of the Directive, to add the following allegation:

1.e You are indebted to State A for a tax judgement/lien entered against you on August 15, 2014, in the approximate amount of \$1,248. As of the date of the SOR, the judgment/lien remains unpaid.

Applicant was given the opportunity to admit or deny the allegation in his response. He did not submit a response, so I will consider it as if he denied the allegation.

Findings of Fact

In his Answer, Applicant admitted the SOR allegations ¶¶ 1.a-1.d with explanation. SOR ¶ 1.e is considered denied. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 62 years old. He has never been married and has no children. He has worked as an engineer for a government contractor since 1997. He earned an associate degree in 1985, a bachelor's degree in 1997, and a master's degree in 2015. He last obtained a security clearance in about 2008. (Item 3)

The SOR alleges failure to file federal and state income tax returns; a federal tax debt of \$91,000; a state tax debt of \$11,000; and a 2014 state tax lien or judgment for \$1,248. The allegations and relevant evidence are summarized below:

SOR ¶¶ 1.a and 1.b allege failures to file federal income tax returns for tax years 2018-2020, and State A income tax returns for tax years 2019 and 2020, respectively. In his 2021 background interview with a government investigator, Applicant stated that he did not have a good reason for failing to file his tax returns. He stated that these were on his to-do list, and that moving a few times and starting a new job contributed to the problem. He claimed that his 2019 and 2020 tax returns would be filed by the end of 2021. In his Answer, he stated that he is working closely with his tax preparer to have his 2019-2021 returns submitted by the end of October 2022, and that his 2018 return was already filed. However, he did not provide any documentation to substantiate his claims. (Answer; Item 5)

SOR ¶ 1.c is an unpaid federal tax debt for \$91,000. In his Answer, Applicant claimed that his IRS debt will be paid in full by the end of 2022. He claimed that he was making payments on the debt, and that the rest of the payment will come from multiple year refunds and a real estate sale. However, he did not provide sufficient documentation to substantiate his claims. (Answer; Items 5, 6)

SOR ¶ 1.d is an unpaid tax debt to State A for \$11,000. In his background interview, Applicant stated that in late 2019 he learned of this tax debt when he went to renew his automobile registration. He claimed that he was required to arrange a payment plan prior to renewal. He admitted that he has not made any payments on the plan. In his Answer, he claimed that the debt was paid down to \$2,700 and that it will be paid in full by the end of 2022. However, he did not provide sufficient documentation to substantiate his claims. (Answer; Items 5, 6)

SOR ¶ 1.e is an unpaid judgment for a tax lien from State A for \$1,248. Applicant did not provide any input about this allegation. The court judgment and lien record shows that a tax lien was entered against Applicant on August 15, 2014. This debt remains unresolved. (Item 7)

In his Answer, Applicant asserted that his monthly income exceeds his monthly obligations. A budget submitted in 2021 shows that he has about \$10,000 of excess monthly income. He claimed that he does not live lavishly and that he expects to be totally debt free by mid-2023. He asserted that he is not a risk to national security and could not be compromised through financial inducements or blackmail to reveal classified information. (Answer, Item 6)

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.

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. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The Appeal Board held in ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016):

Failure to file tax returns suggests that an applicant has a problem complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No, 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed towards inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. *Id.* A person 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.

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;
- (b) 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.

The SOR allegations of Applicant's failure to file federal and state income tax returns, and unpaid federal and state tax debts are established by Applicant's admissions, his 2021 SCA, background interview, response to interrogatories, and the court record. AG ¶¶ 19(a), 19(c), and 19(f) apply.

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; 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.

AG ¶ 20(a) does not apply. Applicant's failure to file federal and state income tax returns, and his federal and state tax debts are recent, ongoing, and unresolved, and did

not occur under circumstances that are unlikely to recur. These issues continue to cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) does not apply. Applicant did not provide sufficient evidence showing that his unfiled income tax returns or tax debts occurred largely due to circumstances beyond his control or that he acted responsibly under the circumstances.

AG ¶ 20(g) does not apply. Applicant has at least three years of unfiled federal income tax returns, two years of unfiled state income tax returns, and federal and state tax debts. He has known about his tax issues for several years, and he has not made any documented effort to resolve them. In his Answer, he claimed that he has made some payments on his tax debts, and that he had filed his 2018 returns, but he provided no documentary evidence of those actions.

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. Applicant did not provide sufficient evidence to mitigate the security concerns arising out of his unfiled federal and state income tax returns, and his delinquent federal and state tax debts under Guideline F.

