



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



In the matter of:)	
)	
)	ISCR Case No. 20-03705
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeffrey Kent, Esq., Department Counsel
For Applicant: Josephine S. Miller, Esq.

05/02/2023

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On April 26, 2022, 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 May 20, 2022 (Answer), and he requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on January 18, 2023.

The hearing was originally scheduled for March 16, 2023. At Applicant’s request, I continued the hearing until April 13, 2023. The hearing was convened as rescheduled on April 13, 2023. During preliminary matters, without objection, and for good cause, the Government amended the SOR by withdrawing the allegation listed in SOR ¶ 1.d. At the hearing, I admitted Government Exhibits (GE) 1 through 4 and Applicant Exhibits (AE) A through C in evidence without objection. At Applicant’s request, I left the record open until April 27, 2023, for him to provide documents to support his case. He timely

submitted AE D, which I admitted in evidence without objection. DOHA received the transcript (Tr.) on April 20, 2023.

Findings of Fact

Applicant is a 43-year-old employee of a government contractor. He has worked full time for his government contractor employer since about 2020. He also has another full-time job that he began in March 2023. He was awarded a bachelor's degree in 2004. He has never married but has lived with a cohabitant since 2011. He has a six-year-old daughter. He served in the Army National Guard from January 2014 until January 2020, and the Army Reserve from 2020 until February 2022, earning an honorable discharge from both. The DoD Consolidated Adjudications Facility (CAF) awarded him eligibility for a secret clearance in July 2020. (Tr. 37-40; GE 1-2; AE C)

In the SOR, the Government alleged that Applicant had not timely filed his federal income tax returns for tax year (TY) 2012, 2015, 2016, 2018, and 2019, despite being required to do so (SOR ¶ 1.a). The Government also alleged that he owed approximately \$5,421 in delinquent federal taxes for TY 2010, and that this federal tax debt remained unpaid until about 2022 (SOR ¶ 1.b). Finally, the Government alleged that he owed approximately \$2,339 in delinquent federal taxes for TY 2011, and that this federal tax debt remained unpaid until about 2021 (SOR ¶ 1.c). In his Answer, Applicant admitted the SOR allegations, but he claimed that he has since filed all the relevant federal income tax returns and paid the relevant delinquent federal taxes. With his Answer, he also provided a document from the IRS showing he had a zero balance for TY 2018, 2019, and 2020. (SOR; Answer)

Applicant failed to timely file his federal income tax returns for TY 2012, 2015, 2016, 2018, and 2019, despite being required to do so. He claimed that he filed his federal income tax return for TY 2012 with the IRS in December 2020. He did not provide an IRS account transcript to corroborate this filing. He did provide documents showing that he received a refund from the IRS for TY 2021. He would not have received a refund if he had not filed his income tax return for TY 2012, so I find that he has late filed his income tax return for TY 2012. He filed his federal income tax returns for TY 2015 and 2016 in June 2018. He filed his federal income tax return for TY 2018 in August 2021. He filed his federal income tax return for TY 2019 in November 2020. While his IRS account transcript shows he filed the TY 2019 return in April 2022, a November 13, 2020 IRS letter reflects that he filed his TY 2019 return by November 2020. (Tr.17-21, 23-32, 40-43, 46-47; Answer; GE 1-3; AE D)

Applicant filed his federal income tax return for TY 2020 in October 2021. He claimed that he obtained a filing extension until October 2021 from the IRS for TY 2020, but he provided no documentary evidence of this extension. He provided a document from the IRS reflecting a universal extension to file returns for TY 2019 from April 2020 to July 2020, because of the COVID-19 pandemic. Any adverse information not alleged in the SOR, such as Applicant's failure to timely file his federal income tax return for TY 2020, will not be considered for disqualification purposes; however, it may be considered in assessing an applicant's credibility; in evaluating an applicant's evidence

of extenuation, mitigation, or changed circumstances; in considering whether the applicant has demonstrated successful rehabilitation; and in applying the whole-person concept. (ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017)). He timely filed his federal income tax return for TY 2021 in March 2022. He timely filed his federal income tax return for TY 2022 in March 2023. (Tr. 62-65; Answer; GE 1-3; AE D)

Applicant owed approximately \$5,421 in delinquent federal taxes for TY 2010 until about March 2022, when he satisfied this debt through IRS refund intercepts from other tax years. He owed approximately \$2,339 in delinquent federal taxes for TY 2011 until about October 2021, when he satisfied this debt through IRS refund intercepts from other tax years. He did not contact the IRS about voluntarily paying his 2010 and 2011 federal tax delinquencies because he thought the refund intercepts were a sufficient means of addressing these debts. (Tr. 17, 30-32, 63-64, 73-75; Answer; GE 1-3; AE D)

Applicant claimed that he owed taxes for TY 2010 and 2011 because he received bad advice from his tax preparer (TP A). He hired TP A to assist him to prepare and file his federal income tax returns for TY 2010, 2011, and 2012 based upon a referral from a friend of his that he trusted. With respect to his federal income tax return for TY 2012, he assumed TP A was filing his return because he had provided TP A the necessary paperwork, but he learned sometime in 2013 that TP A was no longer in business. Despite knowing TP A was out of business sometime in 2013, he claimed he did not realize he had not filed his 2012 federal income tax return until 2020, when he completed the interrogatories identified as GE 2. He claimed that TP A told him that he could claim an exemption for a training course that the IRS later determined he could not claim. This improperly claimed exemption is what caused him to owe taxes for TY 2010 and 2011. He claimed that he did not learn that he owed the IRS money for delinquent federal taxes for TY 2010 and 2011 until June or July 2012, when he received a notice from the IRS. He claimed that when he asked TP A how to pay the taxes he owed the IRS for TY 2010 and 2011, TP A told him to wait until the IRS offset those delinquencies with future federal tax refunds. (Tr. 17-21, 23-32, 41-43, 51-52, 76-77; Answer; GE 1-3; AE C)

Applicant also claimed that TP A told him that he could file his federal income tax returns every other year. He claimed that he filed his income tax returns late based upon this advice. He claimed that he later learned that he had to file his federal income tax return annually, and pay any federal taxes owed when he filed the return. He acknowledged that he filed his federal income tax returns annually prior to TY 2012. He claimed that he never had any federal tax issues prior to receiving this advice from TP A. (Tr. 17-21, 23-32, 41-43, 51-52, 76-77; Answer; GE 1-3; AE C)

For TY 2013 and 2014, Applicant used a “chain” tax preparation company (TP B) to assist him with filing those federal income tax returns. He filed his federal income tax returns on time for those tax years, but his refunds were intercepted to partially satisfy his 2010 and 2011 federal tax delinquencies. He did not seek advice from TP B as to how to satisfy his 2010 and 2011 tax delinquencies other than through refund intercepts, but he acknowledged that he should have. He did not question TP B about whether it is acceptable to file federal income tax returns every other year. However,

given his annual income tax return filing for those consecutive years, he knew it was an annual requirement. He claimed that he filed his federal income tax returns late for TY 2015 and 2016 because he was waiting to file to see if he could pay off his delinquent taxes prior to filing those returns. There is no evidence showing why paying off his federal tax delinquencies could cause him to fail to file subsequent income tax returns, and he acknowledged he used bad judgment in following this course of action. TP B offered to file his federal income tax returns for TY 2015 and 2016, but he did not use TP B because their price increased. He did not consider filing his income tax returns on his own, and he did not use military resources that were available to him. He claimed that his mother passed away in 2015, and dealing with his grief also contributed to failure to comply with income tax return requirements. (Tr. 17-21, 23-32, 52-61, 65-68, 77; Answer; GE 1-3; AE D)

Applicant timely filed his TY 2017 federal income tax return, using another tax preparation company (TP C). He also used TP C to late file his TY 2015 and 2016 federal income tax returns in 2018. He filed his TY 2018 return late because he claimed he had a work obligation that interfered with his doing so. TP C also went out of business, so it was not available to assist him with filing. He claimed without providing corroborating documentation that he received an IRS extension for TY 2018, but he did not meet the extended deadline. He ultimately late filed his income tax return for TY 2018 because he realized he might not be able to obtain a security clearance with outstanding tax obligations. He claimed that he now knows the importance of complying with tax responsibilities, partly because it is part of his civic duty, and he will continue to do so in the future. I observed Applicant while he testified and found him to be honest and credible. (Tr. 17-21, 23-32, 52-61, 65-68, 77; Answer; GE 1-3; AE D)

Applicant claimed that he keeps close track of his credit, especially as his personal information has been involved in data leaks. He has worked with a police detective in State A when he found out that his information was being used on the dark web and has availed himself of credit monitoring services offered by the companies whose computer information systems were breached. He claimed that these data breaches interfered with his ability to timely file his federal income tax returns, but he provided no reasonable nexus between the two. Notwithstanding the debt contained in SOR ¶ 1.d that the Government withdrew, Applicant has one other account, a credit card, that is not more than two payments past due. This credit-card debt is not alleged in the SOR. (Tr. 33-37, 67-69, 72-74; GE 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 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:

(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.

Despite being required to do so, Applicant did not timely file federal income tax returns for several years. He was also delinquent on paying his federal income taxes for TY 2010 and 2011 for about a decade. 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;

(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 now filed all his federal income tax returns that were listed in the SOR. He has also timely filed his federal income tax returns for TY 2021 and TY 2022. He has satisfied his delinquent federal income taxes through involuntary IRS refund intercepts. He does not have a federal tax balance for TY 2021 and TY 2022. He testified that he understands his tax responsibilities and will comply with them. His actions in complying with his SOR tax obligations and his tax obligations for TY 2021 and TY 2022 bolster these statements, show reform and rehabilitation, and show a track record of financial responsibility. I find that his financial issues are unlikely to recur. AG ¶ 20(a) applies.

Applicant failed to timely pay his federal income taxes and file his federal income tax returns for several reasons. Some, such as initially relying on bad advice from TP A were beyond his control. Others, such as continuing to believe it was acceptable to file his income tax returns every other year and pay delinquent taxes through refund intercepts after using TP B were within his control. He should have inquired with TP B whether these tax practices were acceptable, but he did not. This is especially true when considering that he realized in 2013 that TP A provided him with bad tax advice because he tried to claim an expense that he should not have. A degree of ignorance to one's financial situation may suggest an indifference to the proper satisfaction of legal obligations that draws into question Applicant's willingness or capacity to comply with the sometimes complex rules governing the handling and safeguarding of classified information. ISCR Case No. 18-02914 at 4 (App. Bd. Jan. 18, 2020).

With respect to those circumstances that were beyond his control, for AG ¶ 20(b) to apply, he must also show that he acted responsibly under the circumstances with respect to these tax obligations. He began addressing his delinquent income tax return filings when he realized his clearance was in jeopardy. 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 also paid his delinquent federal taxes for TY 2010 and 2011 through involuntary, IRS refund intercepts. Court-ordered or otherwise involuntary means of debt resolution, such as garnishment, are entitled to less weight than actions initiated and carried through by the debtor. ISCR Case No. 17-04110 at 4 (App. Bd. Sep. 26, 2019). With respect to those conditions that were beyond his control, he has not shown that he acted responsibly under the circumstances. AG ¶ 20(b) does not apply.

Applicant has repaid all his delinquent federal taxes. However, as referenced above, he paid them through involuntary, IRS refund intercepts which are of less mitigating effect and fail to show good faith. Moreover, he did not initiate these payments because they were involuntary. AG ¶ 20(d) does not apply.

Applicant has filed his delinquent federal income tax returns, and he has paid his delinquent federal taxes. However, there is insufficient evidence to show that he made an arrangement with the IRS to do so. Instead, the evidence shows that he involuntarily allowed the IRS to intercept his subsequent years' refunds to pay off his delinquent federal taxes. AG ¶ 20(g) partially applies.

One of the mitigating conditions fully applies and another partially applies. Application of a particular mitigating condition does not necessarily establish overall mitigation. However, the purpose of a security clearance case is not to assign guilt or blame and then punish or sanction a person for their past actions. Likewise, a security clearance case is not aimed at collecting debts. Rather the purpose is to make an examination of a sufficient period of a person's life to make a determination that the personal is an acceptable security risk. While he clearly was remiss in satisfying his federal tax obligations in years past, as evidenced by his recent compliance, I believe he has learned his lesson, and he will continue to comply with these obligations. His past tax compliance failures no longer cast doubt on his current reliability, trustworthiness, and good judgment. I find that he has mitigated the financial considerations security concerns.

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 military service, and I have incorporated my comments under Guideline F in my whole-person analysis.

Applicant showed contrition and a current understanding of his tax filing and payment responsibilities. He has remedied his tax deficiencies, and he has shown reform and rehabilitation by timely filing his last two annual income tax returns without a tax delinquency for either. The record evidence leaves me without questions and doubts

about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated 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:	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant
Subparagraph 1.d:	Withdrawn

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Benjamin R. Dorsey
Administrative Judge