



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



In the matter of:)
)
) ISCR Case No. 21-00832
)
Applicant for Security Clearance)

Appearances

For Government: Raashid Williams, Esq., Department Counsel
For Applicant: *Pro se*

05/16/2023

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 December 16, 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.

In an undated answer to the SOR, Applicant requested a hearing before an administrative judge. The case was assigned to me on February 1, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 7, 2023. I convened the hearing as scheduled on April 5, 2023. The Government offered exhibits

(GE) 1 through 5. Applicant offered exhibits (AE) A and B. There were no objections to any of the exhibits and all were admitted into evidence. DOHA received the hearing transcript on April 13, 2023.

Findings of Fact

Applicant admitted all of the allegations in the SOR. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 50 years old. He earned an associate degree and a bachelor's degree. He served in the military from 1992 to 1998 and was honorably discharged. He married in 1998 and divorced in 2001. He remarried in 2002 and divorced in 2020. He and his second wife adopted a child. He has physical custody of the child and does not receive child support. He remarried in 2021 and has two stepchildren. He has been employed by federal contractors since 1998. He has had no periods of unemployment. He has held a security clearance since he was in the military. (Tr. 19-23; GE 1)

The SOR alleges four debts for mortgages obtained by Applicant and his second wife for rental properties. (SOR ¶¶ 1.a - \$31,712; 1.b \$23,190; 1.c - \$6,402; and 1.d - \$3,224). Applicant testified that he had nine rental properties at one time, and his credit was perfect prior to 2013. He obtained the properties from 2000 to 2013. He testified that they were great investments and were inexpensive to purchase. Due to management issues, the properties needed maintenance. He was unable to pay for repairs. Seven of the properties were not rented and were not being maintained properly. He was aware of the problems because the managers were family members. He was paying approximately \$2,000-\$3,000 a month for the seven properties that were not occupied. He stopped paying the mortgages on the rental properties in about 2015 and they foreclosed. He said he received IRS 1099-C cancelation of debt forms for two of the properties. The debts are all charged off. (Tr. 24-25, 28-37, 52-54, 70; GE 2; Answer to the SOR)

In Applicant's SOR answer he stated that the mortgage debts were sold and his understanding is that the "debt collectors listed will continue this process for the remaining companies, as I have received sporadic correspondence at best." He testified that he believes the properties will be sold and the banks will get their money. He said he tried to sell the properties but was unsuccessful. He has not contacted any of the creditors and has not made arrangements to resolve the delinquent loans. (Tr. 25, 52-53, 70; GE 1, 2, 3, 4)

In 2013, Applicant and his second wife adopted a child who had medical issues that required surgeries. He testified that he had medical insurance but not all the expenses were covered. He estimated that since then he has had about \$2,000 a year in his child's medical expenses that was not covered by his medical insurance. He said "everything" took a backseat to his daughter's medical needs. He was focused on his daughter's medical needs, and he was not focused on his finances or tax issues. (Tr. 24-25, 34-36)

In 2011, Applicant went from being a salaried employee receiving a W-2 income statement to an independent contractor. He was not having any income withheld and he was not making estimated tax payments for tax years 2013 to 2018. He said 2013 was the first year he had his daughter and additional expenses. He was not focused on financial matters. He failed to pay his federal income taxes for 2013 (SOR ¶ 1.e - \$64,388), 2014 (SOR ¶ 1.f - \$37,363), 2015 (SOR ¶ 1.g - \$51,263), 2016 (SOR ¶ 1.h - \$22,359), 2017 (SOR ¶ 1.i - \$18,198), and 2019 (SOR ¶ 1.j \$8,690). He testified that he was aware he owed taxes each year and did not pay them. (Tr. 37-41, 69-70; GE 5)

Applicant was interviewed by a government investigator in May 2020. He said sometime in 2018, an IRS agent contacted him about his delinquent federal income taxes. He had not paid his taxes for tax years 2013 to 2017. A payment plan was discussed, and Applicant agreed to make \$2,500 monthly payments on the total amount due at that time of approximately \$150,000. The plan included tax years 2013 to 2017. It is unknown why the plan did not include his 2012 tax debt. Applicant made a payment of \$1,393 in November 2018 and then five monthly payments of \$2,500 from December 2019 to May 2019. These payments were all applied to tax year 2012. When he failed to timely pay his 2018 taxes, the agreement became null and void. Applicant testified that he believed his 2018 taxes would be rolled into the agreement. He said he attempted to contact the IRS and was told to contact the local agent. He said he was unsuccessful. He has attempted to contact the IRS since 2018 and has been unsuccessful. He testified that in March 2023, he contacted a commercial tax company to attempt to resolve the tax debt through an offer-in-compromise. He has not hired anyone but he intends to reach out to them again. His plan for the future is to negotiate with the IRS to resolve the debt. He has not contacted the IRS to begin this process. (Tr. 26-27, 41-49, 51, 67-70; GE 2, 5; AE B)

Applicant provided a payment activity document from the IRS showing the following payments: \$8,678 - April 2021; \$199 - May 2021; \$300 - August 2021; \$100 in the months of December 2021, January, March, and September 2022; \$5,790 - November 2022; \$423 - December 2022; and \$100 - March 2023. In addition, Applicant provided an account balance document from the IRS that shows a total amount of taxes owed as \$186,878 for tax years 2013 through 2018. It does not reflect current information for tax year 2020. Applicant testified that he believes he owes approximately \$2,500 for tax year 2020. He intends to pay it. It shows a zero balance for 2019 and 2021. No other information was provided by Applicant about how he intends to resolve his tax debt. (Tr. 24, 47-51; AE A, B)

The debts alleged in the SOR are corroborated by Applicant's answer to the SOR, testimony, tax transcripts, and credit reports from February 2021, May 2020, and September 2020 (GE 1, 3, 4, 5)

Applicant earns approximately \$139,000. His wife works part time as a substitute teacher. He has to pay his second wife \$1,200 a month for five years as part of a division of assets because he received the house in their settlement. He purchased a new car in 2020. His child and stepchildren attend private school costing about \$1,100 monthly. He has approximately \$1,000 to \$2,000 in expendable income after he pays the family

expenses. He sporadically invests his expendable income when he can in cryptocurrency. Two years ago, he invested \$8,000 in cryptocurrency. It was worth as much as \$30,000 at one point but is now only worth \$2,000. When asked if he used any of his expendable income to pay his delinquent taxes he responded, "As I have the extra money, I throw it that way." (Tr. 63) When asked why he only paid about \$100 quarterly towards the delinquent taxes he said, "We still live and do other things with the money that's left over." (Tr. 63) He has had no financial counseling. He thought he was about 90 days delinquent on a payment for a credit card. (Tr. 54-66)

Three character witnesses testified on Applicant's behalf. He is described as a good person who would not compromise himself in a security situation. He is a problem-solver and trusted. He has integrity and is loyal and dependable. (Tr. 72-92)

Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes. It may be considered in the application of mitigating conditions, in making a credibility determination, and in a whole-person analysis.

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the 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.

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 taxes in the amount of at least \$186,878. He also has approximately \$64,528 of charged-off mortgage debt. When his rental properties were no longer profitable, he essentially abandoned the mortgage debts and does not intend to resolve them, expecting the creditors to recoup their losses elsewhere. He has repeatedly knowingly failed to pay his federal income taxes for tax years 2013 to 2018. 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 purchased nine rental properties and when some were no longer profitable, he abandoned his responsibilities to pay the mortgages. He has not made any effort to resolve them, expecting the creditors to recoup their losses through the foreclosure process. Applicant failed to pay his federal income taxes for tax years 2013 to 2018 and owes at least \$186,878. He attributed his tax problems to paying medical expenses for his daughter. He said his out-of-pocket expenses were about \$2,000 a year. At one point in 2018, he made an agreement with the IRS to resolve his tax debt and he made a few payments, but after there was some confusion about his 2018 tax debt, he never made a new agreement with the IRS. He has made sporadic payments to the IRS.

Applicant's delinquent debts are ongoing and recent. Although his daughter's medical expenses may have initially impacted his finances, there is scant evidence that

Applicant made efforts to have income withheld from his pay to cover his yearly tax debts. He had an agreement with the IRS at one point, but then stopped making payments when there was some confusion. Based on his testimony, he has some expendable income he could use to address his tax debt, and he will occasionally make a payment, which he provided a document to show. Applicant has not acted responsibly toward his debts. He has not participated in financial counseling. An occasional payment toward his tax debt does not constitute a good-faith effort to resolve his tax debts. He does not have an arrangement with the IRS to resolve his large tax debt. Applicant's conduct casts doubt on his reliability, trustworthiness, and good judgment. None of the mitigating conditions 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.

Despite being aware that he had an obligation to plan for his tax liability, Applicant repeatedly failed to do so. His failure to responsibly address his delinquent tax debt is a concern. 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).¹

Applicant's history of non-compliance with a fundamental legal obligation to timely pay his federal income taxes raises serious concerns. He has no intention of paying the creditors on his rental properties. The record evidence leaves me with serious 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
Subparagraphs 1.a-1.j:	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

¹ ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).