



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



In the matter of:)
)
) ISCR Case No. 21-02085
)
Applicant for Security Clearance)

Appearances

For Government: Daniel O’Reilly, Esq. Department Counsel
For Applicant: *Pro se*

05/25/2023

Decision

MURPHY, Braden M., Administrative Judge:

Applicant has begun to address his debts, but his tax issues are recent and ongoing. He needs to set forth a track record of steady payments towards his past-due taxes and other debts to fully mitigate financial security concerns. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 9, 2020. On October 13, 2021, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The CAF issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on February 16, 2022, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on January 6, 2023. On January 17, 2023, DOHA issued a notice scheduling a video-teleconference hearing for February 15, 2023.

The hearing convened as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 through 8, which were admitted without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through J, which were admitted without objection. I held the record open to allow Applicant the opportunity to submit additional documentation.

Applicant submitted his federal income tax returns for tax years 2018, 2020, and 2021. (AE K, AE L, and AE M) He later submitted signature pages for those returns, signed on June 10, 2022. The signature pages are appended to each document (AE K, AE L, and AE M, respectively). Department Counsel initially objected to admission of the documents on the grounds that it was not clear when they were prepared and submitted. Applicant then provided a May 11, 2022 e-mail from his tax preparer (AE N), and Department Counsel withdrew his objection. Applicant also submitted two reference letters. (AE O and AE P) His post-hearing submissions are all admitted without objection. The record closed on March 29, 2023. DOHA received the hearing transcript (Tr.) on February 28, 2023.

Findings of Fact

Applicant admitted SOR ¶ 1.a. He admitted SOR ¶¶ 1.b, 1.c, and 1.d, while denying the amounts alleged. He denied SOR ¶¶ 1.e -1.o, questioning the legitimacy of each account. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and the record evidence, I make the following additional findings of fact.

Applicant is 42 years old. He has never married and has no children. He has had a clearance previously. He has been a federal contractor since 2012 and has been with his current employer since March 2018. He works as an information technology (IT) technician. He has an annual salary of about \$70,000. During the baseball season, he also works a part-time job in concessions. This helps him provide further aid to his family and helps pay his bills. (Tr. 52-56) He lives by himself in a rental apartment. (Tr. 10, 52-56, 105)

Applicant disclosed some past-due debts on his SCA and discussed debts in further detail in his background interview, in May 2020. (GE 1, GE 2) He submitted an Interrogatory response to the CAF in July 2020 about his debts, and disclosed that he was resolving his debts through debt-relief company L. He said that he had settled and resolved some debts and was working on others. He also disclosed some delinquent taxes. (GE 6)

This led to a further interrogatory about his taxes, to which he responded in April 2021. He provided federal income tax transcripts from the IRS for tax years 2017-2020 and state tax returns and other documents from tax years 2017 and 2019. (GE 3, GE 4, GE 5) This was how he became aware that his 2018 return was unfiled. (GE 3; Tr. 43)

The SOR alleges failure to file federal tax returns and about \$25,500 in past-due federal and state income taxes (SOR ¶¶ 1.a – 1.c) as well as just over \$15,000 in other delinquencies. (SOR ¶¶ 1.d-1.o) The tax issues are established by Applicant's interrogatory responses and tax transcripts. (GE 3-6) The other debts are established by credit reports from May 2020 and September 2021. (GE 7-8) He updated his SOR response in February 2023. (AE D)

SOR ¶ 1.a alleges that Applicant failed to file his federal income tax returns (i.e., tax returns) as required, for tax years 2018 and 2020. GE 3 and GE 4 reflect that when Applicant submitted his second Interrogatory response, in April 2021, he provided IRS tax transcripts from March 2021, a month earlier. At that time, his 2018 federal return was unfiled (and also late), and his 2020 federal return was unfiled (but, at the time, not due yet, until April 2021, a date that was extended due to the COVID-19 pandemic).

Applicant filed his federal tax returns for TY 2018, 2020, and 2021 in June 2022, with the assistance of a tax preparer. For TY 2018, he owed no balance. For TY 2020, he owed \$615. For TY 2021, he was due a \$390 refund. (AE K-N; Tr. 39) He therefore filed his 2018 and 2020 federal tax returns late. He has filed all of his past-due federal returns. (Tr. 48-52, 62-70, 99-102)

SOR ¶¶ 1.b (\$5,641, for TY 2017) and 1.d (\$12,300, for TY 2019) concerns past-due federal income tax debt. (GE 4) Applicant is unsure how these tax debts came about. He is not yet on a repayment plan but intends to establish one. He has yet to contact the IRS to start that process. He believes he owes between \$10,000 and \$13,000, but this is undocumented. He believes any refunds from other tax years (2018, 2020, 2021) would be directed towards those debts. (Tr. 44-48, 52, 73-76, 97-102)

SOR ¶ 1.c (\$2,592, for TY 2019) concerns past-due state income tax debt. (GE 5) Applicant said he believed he owed only about \$600 at this point because his state tax refunds had been redirected to address his tax debt. (Tr. 46-48, 52, 70-72, 97-98) He provided tax documentation regarding refunds from TY 2021 (\$2,901) and TY 2022 (\$3,969), both of which reflected that they were "applied to other tax years." (AE I- J) This suggests that his past-due state tax debt to be resolved is more than just the \$2,592 owed for TY 2019, though the amount remaining and owed is unclear.

The remaining SOR debts are all consumer accounts or utilities. Applicant partially admitted them in his Answer but was unsure the accounts or the debt amounts were legitimate. He accepted responsibility for all the accounts at his hearing. (Tr. 77)

SOR ¶ 1.e (\$1,233) is an account that has been charged off by a bank. Applicant said in his answer that the account was in the process of being paid. He later clarified

that he was working towards paying it, which he intends to do. He said each time he gets paid, money goes towards his debts. (Tr. 78) This debt is as yet unresolved.

SOR ¶ 1.f (\$203) is an account placed for collection by a bank. The account has been paid. (Tr, 79; AE E)

SOR ¶ 1.g (\$689) is an account placed for collection. Applicant said he is scheduled to start paying on it, but it remains pending, since the creditor will not settle the debt. (Tr. 79-80)

SOR ¶ 1.h (\$468) is an account placed for collection. This account has been paid. (Tr. 81-82; AE F)

SOR ¶ 1.i (\$3,625) is an auto-financing account that has been charged off by the creditor. The car broke down. Applicant said he only owed about \$1,000 on the car payments. He called the dealer to return the car in about 2017. The dealer called and said the account has been paid off, though Applicant said he did not make payments to do so. AE G, an excerpt from a credit report, shows a zero balance. The debt is therefore resolved. (Tr. 82-85; AE G)

SOR ¶ 1.j (\$5,754) is an account that has been charged off. It relates to furniture. Applicant received a settlement offer of \$3,650. He has not made any payments, and the debt remains unpaid, but he intends to resolve it. (Tr. 87-88)

SOR ¶ 1.k (\$1,216) is an account placed for collection by a cell phone company. Applicant contacted the phone company and was referred to the collection company, who then said the account was closed and referred him back to the creditor. This debt is unresolved, but Applicant plans on addressing it next, after SOR ¶ 1.m. (Tr. 76, 88)

SOR ¶ 1.l (\$1,186) is an account placed for collection by a utility company for an unpaid gas bill from Applicant's first apartment, in 2016. He has not made efforts to resolve it and it is unpaid. (Tr. 89-90)

SOR ¶ 1.m (\$566) is a medical account that has been placed for collection. This debt is unresolved, but Applicant plans on addressing it next. (Tr. 76, 90)

SOR ¶ 1.n (\$263) is an account placed for collection by a phone company. The debt has been paid. (Tr. 90-91; AE H)

SOR ¶ 1.o (\$142) is an account placed for collection by a cable or internet provider. Applicant said he paid it, but this is undocumented. (Tr. 91-92)

Applicant said his financial problems began in about 2016. He got his first job in IT, earning about \$30,000 annually, and moved out of his parents' home. His father also experienced a serious medical condition that required expensive emergency surgery. Applicant helped his family with their expenses. He also moved home, breaking an

apartment lease, for which he had to pay a penalty. He said that debt was paid in about 2020 or 2021. He moved out on his own again after about a year, but he still helps his parents out with their expenses, including their mortgage. He contributes about \$300 or \$400 a month. (Tr. 55-61, 94-96)

Applicant said he resolved other debts that were not alleged in the SOR. He said he became aware of many of his debts during the clearance application process. (Tr. 92-94) He testified that he is working on improving his credit. He retained credit repair firm L in May 2020 and was paying them a \$200 monthly fee. He soon concluded this was a waste of time and money, so he stopped that agreement in 2021. He then took steps to address his debts himself. He feels he is making progress. Tr. 38-41, 57, 96) He has not pursued formal credit counseling. (Tr. 94) Applicant now drives a luxury model used car (model year 2013) that he bought three years ago. The purchase price was \$28,000 to \$30,000. The monthly payment is \$589 and he is current. (Tr. 86-87)

Applicant testified that he is productive and a hard worker. He is working on getting everything resolved and will continue to do so. (Tr. 52 107-108)

Applicant provided several reference letters by people who know him attesting to his character. One of Applicant's uncles is a retired Air Force master sergeant and current government contractor. He has known Applicant for more than 35 years. Applicant is respectful and diligent. He is a caring and helpful family member. He is goal-oriented and a hard worker. (AE A) An aunt is also a retired federal employee. She worked with him at her place of employment for a time in the past. He is a hard worker, good family member, and is knowledgeable, honest, and trustworthy. (AE B)

A co-worker and friend attested to Applicant's trust and confidence in difficult personal times. Applicant has good moral character, and he deserves a second chance. (AE C) A former supervisor noted that Applicant possesses many fine qualities, including integrity, punctuality, and good communication skills. He handles tasks efficiently and is knowledgeable and goal oriented. He is dedicated to his family. (AE O) Another co-worker attested to Applicant's work ethic and adherence to the rules and requirements regarding protection of sensitive and classified information. (AE P)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant's eligibility 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 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(a), 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 not drawn 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. Under Directive ¶ E3.1.15, 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 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.

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. . . . 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 sets forth several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (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 incurred past-due state and federal income tax debts and other debts, during a period of financial hardship for his family. He also failed to file some tax returns on time. The above disqualifying conditions apply.

Failure to file tax returns suggests that an applicant has a problem with 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. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 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. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis added). See ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015).

Conditions that could mitigate 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;

(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 has paid or resolved several of his SOR debts, including SOR ¶¶ 1.f, 1.h, 1.i, 1.n, and 1.o. The other debts alleged, however, are as yet unresolved. He has filed his past-due tax returns, but his tax debts, particularly his federal tax debts, remain unresolved, and he has yet to put a plan in place to address them. Applicant's issues are therefore ongoing. AG ¶ 20(a) does not apply.

AG ¶ 20(c) partially applies to his taxes, since he cured his tax filing issues with the aid of a tax preparer. But he has not pursued formal credit counseling and his debts are not yet resolved or under control. AG ¶ 20(c) does not otherwise apply.

Applicant's financial issues began during a time of financial hardship for his family. AG ¶ 20(b) therefore has some application. He has undertaken efforts to pay some of his debts, but the largest concern is his unresolved tax burden. He has not undertaken reasonable, good-faith efforts to address that debt. He has not established that AG ¶¶ 20(b) or 20(d) should fully apply.

AG ¶ 20(g) applies to Applicant's late-filed tax returns, which have now been addressed and filed (SOR ¶ 1.a) However, he has yet to contact the IRS to address his significant past-due tax debt or to make payments towards resolving it. His state tax debt, while smaller, is also not clearly resolved. AG ¶ 20(g) therefore does not fully 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 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.

I considered Applicant's financial hardships, his excellent work record, and his efforts to resolve his debts so far. While he has made progress, he needs to establish more of a track record, particularly towards resolving his tax debts, to fully mitigate security concerns. This is not to say that Applicant cannot be a suitable candidate for classified access in the future. Overall, however, the record evidence leaves me with questions and doubts as to Applicant's eligibility for access to classified information. Applicant did not mitigate financial 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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraphs 1.h-1.i:	For Applicant
Subparagraphs 1.j-1.m:	Against Applicant
Subparagraphs 1.n-1.o:	For Applicant

Conclusion

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

Braden M. Murphy
Administrative Judge