



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



In the matter of:)	
)	
)	ISCR Case No. 21-02221
)	
Applicant for Security Clearance)	

Appearances

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

04/19/2023

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the personal conduct and financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 1, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and F (financial considerations). Applicant responded to the SOR on February 14, 2022, and requested a hearing before an administrative judge. The case was assigned to me on September 26, 2022.

The hearing was originally scheduled for October 28, 2022. It was continued at Applicant's request and convened as rescheduled on December 13, 2022. The SOR was amended at the hearing (see below), and Applicant's request for a continuance was granted until February 16, 2023. The hearing reconvened on that date. The transcript of the first hearing (Tr.1) was received on December 22, 2022. The transcript of the second hearing (Tr.2) was received on February 28, 2023.

Procedural and Evidentiary Rulings

Evidence

Government Exhibits (GE) 1, 3, and 4 were admitted in evidence without objection. The objection to GE 2 was sustained. Applicant testified and submitted Applicant's Exhibits (AE) A through I, which were admitted without objection.

SOR Amendment

On my own motion and without objection, I amended the SOR by adding an additional allegation under Guideline E and an additional allegation under Guideline F. The new allegations are as follows:

1.h. You falsified material facts on an Electronic Questionnaires for Investigations Processing (e-QIP) executed by you on March 9, 2020, in response to "Section 26-Financial Record, In the last seven (7) years have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?" You answered no, and thereby deliberately failed to disclose that you owed the IRS about \$23,000.

2.k. You owe the IRS about \$23,000 in unpaid federal taxes.

Findings of Fact

Applicant is a 47-year-old employee of a defense contractor. He served on active duty in the U.S. military from 1995 until he was honorably discharged in 2003. He has a 100% disability rating from the Department of Veterans Affairs (VA). He earned a bachelor's degree in 2019. He is married for the third time after his first two marriages ended in divorce. He has six children between the ages of 22 and 12 and two stepchildren. (Tr1. at 21-23, 42-43, 51; GE 1)

Applicant was arrested in about 2013 and charged with the felony offense of criminal injury to a child. He stated that he thought he was arrested in February 2013. He stated that the charge was based on an allegation made by his former spouse. The charge was dismissed in April 2015 due to "prosecutorial discretion." There is no independent evidence (e.g., FBI identification record, police report, court documents) to determine exactly when he was arrested or the validity of the charge. (Tr.1 at 31-34; Tr.2 at 12-15; AE B)

Applicant lost a job in about 2015 when he was unable to obtain a security clearance. There is no evidence that his clearance was formally "denied." He received unemployment compensation. (Tr.1 at 25-31; Applicant's response to SOR)

Applicant worked for a company from about 2016 to January 2019. He was driving a company truck in 2018 when he had a minor accident. He stated that a tire blew out, which caused him to hit a guardrail. He was counseled in writing. He had

another accident in about January 2019. He stated that he swerved to miss a deer and hit a guardrail. He was called in by his supervisor who told him that he was being fired for the second accident. He was permitted to resign in lieu of being fired. (Tr.1 at 39-40; Tr.2 at 10-12; GE 1)

Applicant has a history of financial problems, including child support arrearages, delinquent debts, and unpaid taxes. He filed a Chapter 13 bankruptcy case in about November 2014. (SOR ¶ 2.a) The case was dismissed in 2015. (Tr.1 at 35, 41-42; Applicant's response to SOR; GE 3, 4)

Applicant admitted for the first time during his hearing in December 2022 that he owed the IRS about \$23,000 in unpaid taxes. (SOR ¶ 2.k) He stated that the IRS started garnishing his wages \$1,600 per month in October 2022. He stated that the problem went back about three to four years and occurred because he and his ex-wife both claimed their three children as exemptions. He retained a tax attorney to assist him. The amount of about \$23,000 and the \$1,600 per month garnishment were worked out between his attorney and the IRS. He stated that he planned to pay his back taxes within a month. (Tr.1 at 58-68)

Applicant testified during the second hearing that he paid the back taxes. He stated that he made a lump-sum payment after the first hearing. He did not provide proof of the payment nor any documents from the IRS, but he submitted an account overview from his attorney that may have been derived from IRS tax account transcripts. The overview does not show that Applicant currently owes the IRS. It does show that federal income tax returns were not filed in 2009, 2013, 2015, or 2016.¹ It also showed that the 2017 federal return was not filed until January 2022, and the 2018 federal return was not filed until July 2021. Applicant testified that he filed his federal returns on time, and that the document was incorrect. (Tr.2 at 22-24; AE G)

Applicant had child support arrearages. The March 2020 combined credit report showed past-due accounts with balances of \$22,554 (SOR ¶ 2.b) reported by Equifax and Experian, and \$6,949 (SOR ¶ 2.c) reported by Equifax. The May 2021 Experian credit report shows the first account with a balance of \$22,289. The second account is not listed on that report. Applicant stated that he is current on his child support for all his children. He provided documentation showing he was current on the \$22,554 account as of January 2023. The \$6,949 account had been reduced to \$151 as of January 2023. (Tr.1 at 41-44; AE D)

Applicant was the cosigner on a vehicle that was repossessed in 2014 or 2015. The credit reports show that the creditor charged off \$9,117 in September 2015. The balance is listed as \$13,378 (SOR ¶ 2.d). He stated that he thought the account was resolved when the vehicle was auctioned. He has not made any payments toward the deficiency balance. (Tr.1 at 44-45)

¹ The SOR did not allege that Applicant failed to file his federal income tax returns. Any matter that was not alleged in the SOR cannot be used for disqualification purposes. It may be considered in assessing Applicant's credibility, in the application of mitigating conditions, and in the whole-person analysis.

SOR ¶ 2.h alleges a \$196 utilities debt. Applicant wrote in his response to the SOR that the balance was \$0. He testified in December 2022 that he resolved the debt, but he was unsure when. He paid the debt on January 12, 2023. (Tr.1 at 49-50; Applicant's response to SOR; GE 3, 4; AE A)

SOR ¶ 2.i alleges a \$190 utilities debt. Applicant wrote in his response to the SOR that the balance was \$0. He paid the debt in August or September 2022. (Tr.1 at 50; Applicant's response to SOR; GE 3, 4; AE H)

SOR ¶¶ 1.e, 1.f, 1.g, and 1.j allege delinquent debts of \$579, \$572, \$226, and \$116. Applicant asserted that the debts were paid. The debts are all listed on the March 2020 combined credit report. Only the \$116 debt is listed on the May 2021 Experian credit report. (Tr.1 at 45, 50-51; GE 3, 4)

Applicant stated that his current financial situation is sound. Between his salary, his wife's salary, and his VA disability payments of about \$3,500 per month, he is able to pay all his bills. He has two 2022 vehicles for which he pays about \$815 and \$650 per month. He stated in the first hearing that he had almost \$30,000 in the bank. His bank statement showed that he had \$2,212 in his checking account and \$23,014 in his savings account. (Tr.1 at 51-58; AE C)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in March 2020. There were several things not reported, such as some of his employment, his children, his 2013 arrest and charge of criminal injury to a child, his 2014 Chapter 13 bankruptcy case, his 2019 counseling and resignation in lieu of termination, and his unpaid taxes. Applicant denied intentionally providing false information under all the questions, except the question about unpaid taxes. He admitted that he intentionally did not report his unpaid taxes because he thought he would lose his job if he reported them. (Tr.1 at 25-38, 63-64; Tr.2 at 7-8, 16-21; GE 1)

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:

- (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 has a history of financial problems, including a Chapter 13 bankruptcy case, delinquent debts, child support arrearages, and unpaid taxes. AG ¶¶ 19(a), 19(c), and 19(f) are applicable.

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;
- (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;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; 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's Chapter 13 bankruptcy case was dismissed in about 2015 (SOR ¶ 2.a). He is current on his child support (SOR ¶¶ 2.b and 2.c). He documented that he paid the \$196 and \$190 utilities debts (SOR ¶¶ 2.h and 2.i). He stated that he paid the debts alleged in SOR ¶¶ 2.e, 2.f, and 2.g. None of those debts are listed on his most recent credit report. All the allegations in this paragraph are mitigated.

Applicant stated that he paid the debt alleged in SOR ¶ 2.j, but he did not submit supporting documentation. The Appeal Board has held that "it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts." See ISCR Case No. 09-07091 at 2 (App. Bd. Aug. 11, 2010) (quoting ISCR Case No. 04-10671 at 3 (App. Bd. May 1, 2006)). It is Applicant's burden to mitigate established facts. He has not established that this debt has been paid. There is no evidence that payments have been made on the \$13,378 debt for a repossessed vehicle (SOR ¶ 2.d). These debts are not mitigated.

Applicant admitted for the first time during his hearing in December 2022 that he owed the IRS about \$23,000 in unpaid taxes. He stated during the second hearing that he paid the taxes, first by garnishment, starting in October 2022, and then by a lump-sum payment in between the two hearings. 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 ISCR Case No. 17-03229 at 6 (App. Bd. Jun. 7, 2019).

Applicant did not submit documentation from the IRS. but he submitted an account overview from his attorney that may have been derived from IRS tax account transcripts. Applicant wants me to accept the document as proof that he paid his taxes, but disregard that the document shows that he did not file federal income tax returns in 2009, 2013, 2015, and 2016. I accept that the taxes have been paid, but I also accept that he did not file tax returns in 2009, 2013, 2015, and 2016. AG ¶ 20(g) is applicable to the paid taxes, but that does not end the discussion.

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). This is true even when the taxes are eventually paid.

Applicant's failure to fulfil his duty to file his income tax returns and pay his taxes on time continues to raise doubts about his judgment, reliability, and willingness to follow rules and regulations. The mitigation provided by the paid taxes is insufficient to overcome the years of Applicant shirking his responsibility to file his tax returns and pay his taxes. Financial considerations security concerns are not mitigated.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security clearance investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

(2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

SOR ¶ 1.f alleges that Applicant resigned in lieu of termination in 2019 for multiple write ups. The only evidence in the record is that Applicant was involved in two traffic accidents after a blow out and when he swerved to miss a deer. His company may have been justified in letting him go even if the accidents were not his fault, but two accidents, without any additional evidence, are not enough to raise a personal conduct security concern. SOR ¶ 1.f is concluded for Applicant.

SOR ¶ 1.g alleges that Applicant was terminated from his employment because his security clearance was denied. There is no evidence that Applicant was “denied” a security clearance. Even if Applicant had been denied a security clearance, that is not enough to raise independent personal conduct security concerns. Individuals are denied security clearances all the time for matters that have absolutely nothing to do with personal conduct. SOR ¶ 1.g is concluded for Applicant.

SOR ¶¶ 1.a, 1.b, and 1.d allege that Applicant falsified the March 2020 SF 86 when he failed to report his 2015 and 2019 terminations (SOR ¶ 1.a), his November 2013 arrest (SOR ¶ 1.b), and his 2014 Chapter 13 bankruptcy case (SOR ¶ 1.d). Applicant credibly denied intentionally falsifying these questions. I find that there is insufficient evidence to determine that he intentionally falsified these questions. SOR ¶¶ 1.a, 1.b, and 1.d are concluded for Applicant.

SOR ¶ 1.c alleges that Applicant falsified the March 2020 SF 86 when he failed to report that his security clearance was “denied” in 2015. There is no evidence that his clearance was denied. SOR ¶ 1.c is concluded for Applicant.

SOR ¶ 1.e alleges that Applicant falsified the March 2020 SF 86 when he failed to report his financial issues under the following specific questions:

In the past seven (7) years, [have] you had bills or debts turned over to a collection agency? [and] In the past seven (7) years, [have] you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? (Include financial obligations for which you were the sole debtor, as well as those for which you were a cosigner or guarantor).

To prove this allegation, the Government must prove by substantial evidence, among other things, that Applicant knew that he “had bills or debts turned over to a collection agency” or that he knew that he “had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed.” That knowledge has not been established. There is insufficient evidence that Applicant intentionally falsified the specific questions alleged in SOR ¶ 1.e, and that allegation is concluded for Applicant.

Applicant intentionally provided false information on the March 2020 SF 86 when he failed to report his unpaid federal taxes. AG ¶ 16(a) is applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant did not report his unpaid federal taxes until he was specifically asked about his taxes during the first hearing in December 2022. None of the mitigating conditions are applicable.

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 incorporated my

comments under Guidelines E and F in my whole-person analysis. I also considered Applicant's honorable military service and that he is a disabled veteran.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the personal conduct and 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 E:	Against Applicant
Subparagraphs 1.a-1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Paragraph 2, Guideline F:	Against Applicant
Subparagraphs 1.a-1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraphs 1.e-1.i:	For Applicant
Subparagraphs 1.j-1.k:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge