



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



In the matter of:)	
)	
)	ISCR Case No. 21-02273
)	
Applicant for Security Clearance)	

Appearances

For Government: Brian Farrell, 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 January 28, 2022, 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.

On February 8, 2022, Applicant answered the SOR, and he 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 6, 2023. I convened the hearing as scheduled on April 3, 2023. The Government offered

exhibits (GE) 1 through 4. Applicant offered Applicant Exhibits (AE) A through H. There were no objections to any exhibits, and they were admitted into evidence. Applicant and one witness testified. The record was held open until April 18, 2023, to allow Applicant to submit additional documents. He provided AE I through N, which were admitted without objection, and the record closed. DOHA received the hearing transcript (Tr.) 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 56 years old. He served in the military from 1986 to 2011 and was honorably retired. He married in 1986 and divorced in 2014. He has three children, ages 33, 28 and 26. He earned a bachelor's degree in 2017. He has not experienced any periods of unemployment and has worked for the same government contractor since his 2011 military retirement. (Tr. 16-21)

The SOR alleges that Applicant is indebted to the federal government for delinquent federal income taxes, The allegations (Sugg) are supported by tax transcripts from December 2021. (GE 2) The debts are as follows:

- SOR ¶ 1.a – tax year 2015 (\$1,197)
- SOR ¶ 1.b – tax year 2016 (\$668)
- SOR ¶ 1.c – tax year 2017 (\$8,198)
- SOR ¶ 1.d – tax year 2018 (\$1,728)
- SOR ¶ 1.e – tax year 2019 (\$5,712)
- SOR ¶ 1.f – tax year 2020 (\$6,536)

In October 2020, Applicant completed a security clearance application (SCA). In it he disclosed that he owed delinquent federal income taxes for 2015, 2018, and 2020. He said they were delinquent because he was paying his child's student loans and other obligations. For his 2015 tax debt he said he would start making \$500 payments by October 2019. (Presumably he meant 2020.) For tax year 2018 he said he would make restitution by the end of the year (2020). For tax year 2020, he would be making monthly payments of \$700 because his financial situation had settled down and he would begin in October 2020. (GE 1)

Applicant was interviewed by a government investigator in April 2021. He told the investigator that he owed taxes for every tax year since his divorce because he did not have enough money to pay them. He said he was not earning enough, and he was financially overextended. He said he paid his tax bill through 2016, but still owed 2017 through 2020. He received notices from the IRS about his taxes debts but did not respond because he knew he owed money. He had an installment agreement with the IRS a couple of years earlier, but he failed to maintain the monthly payments. He was hoping to

refinance his home to reduce his mortgage and use the extra money to pay his taxes. (GE 2)

Applicant testified that tax year 2011 was the first year he owed taxes when he filed his return. He did not have enough money withheld from his income to cover his tax debt. This continued for tax years 2012 and 2013. It is unknown if he owed federal income taxes for tax year 2014. Each subsequent tax year he owed taxes and was unable to pay. He attributed it to having a new house, three children and their expenses, and his 2014 divorce. (Tr. 26-28)

Applicant testified that in 2012 he hired an accountant to prepare his tax returns, which were electronically filed. He had no explanation for why he did not pay them or change his withholdings each year to cover the amount he would owe. He said he did not discuss it with his accountant. Each year, he would drop off his tax information to his accountant who would prepare his returns. Applicant would sign the returns, and they would be filed electronically. He was aware he owed taxes each year and received notices from the IRS. He did not pay his taxes, and he did not execute a payment plan with the IRS. (Tr. 35-41)

Applicant provided tax transcripts from December 2022 for tax years 2015, 2016, 2017, and 2018, which show he has a zero-balance owed for each year. He only provided the first two pages of the transcripts, so the tax history is unknown. For tax years 2019 he owes \$4,287 and 2020 he owes \$7,067. Applicant testified that he also owes taxes for tax year 2021 of about \$6,000. He estimated he would owe about the same amount of \$6,000 for tax year 2022, which was not due at the time of his hearing. (AE B-G)

Applicant testified that he also did not pay his taxes in 2012 and 2013 because he was going through a divorce, he had a new house, and he had expenses associated with his children, such as the prom. During their marriage, his wife worked full-time. He divorced in 2014 and he was not required to pay spousal support. His ex-wife waived her right to receive 50% of his military retirement pay. He received the house in the divorce settlement and was not required to pay her any of the equity in the house. They split the joint debts where he paid 70% and she paid 30%. He said after his divorce he was depressed, overwhelmed, and shut down mentally. He received notices from the IRS in the mail about his delinquent taxes and the amount owed. He claimed he made maybe four or five sporadic payments towards his tax debts. (Tr. 29-34, 54-59, 74; AE D)

In 2017, Applicant completed his bachelor's degree, which was financed through student loans. He estimated he owed approximately \$28,000 for student loans. He testified that when his student loans became due, he did not pay them and defaulted. He said he was busy paying other bills. The creditor contacted him in 2021, and he consolidated the loans in July 2021. He said he then made an agreement to pay \$124 a month. The student loans have been deferred due to the pandemic. He anticipated he would start making the payments before the deferment is canceled. (Tr. 42-52)

Applicant stated that he was promoted to a new position sometime in 2021 or 2022 and was earning more money. He testified that he delayed paying his tax debt because he was paying other bills that he had fallen behind on, such as consumer debts to stores and car payments, and he was making a payment plan for his student loans. His income has been stable and has been on an upward trend over the years. (Tr. 42-43, 52-54)

On February 9, 2022, the day after providing an answer to the SOR, Applicant made four payments to the IRS. A payment of \$1,201 for tax year 2015; \$671 for tax year 2016, \$8,335 for tax year 2017, and \$1,735 for tax year 2018. He testified that he had not made any payments for taxes owed from 2015 through 2020 before then. He had this money in his savings account as an emergency fund. He said he did not make this payment earlier because he is a contractor and could lose his job at any time, so this was held in reserve. He also entered into an installment agreement with the IRS to begin in March 2022 to make \$1,200 monthly payments toward his total tax debt. He provided a copy of the agreement and receipts to show he has made consistent payments since April 2022 and the plan is current. The plan states it includes tax years 2013 through 2020. Post-hearing Applicant provided a transcript from April 2023 for tax year 2013, which shows he resolved the tax debt for 2013. (Tr. 24-26, 41, 63-68, 73; Answer to the SOR; AE A, H, J, M, N)

When asked what his plans were for paying what he anticipated would be a \$6,000 tax debt for 2022, he said he would try and pay it, but if it is this amount, he will be unable to pay it in full. He said he would add it to the balance he owed and continue making the \$1,200 monthly payments as part of his installment agreement with the IRS. He anticipated that penalties and interest would be added to his 2022 tax debt. (Tr. 26, 66-73)

Applicant provided an IRS document that shows the total balance he owes as of April 2023 is \$14,698. It reflects he owes \$824 for tax year 2019, \$7,239 for tax year 2020, and \$6,633 for tax year 2021. (AE A)

The SOR alleged a charged-off account for a repossessed vehicle in the amount of \$12,744. Applicant cosigned a car loan for his daughter in 2014. She failed to pay the loan. He returned the vehicle to the creditor. He did not follow up on the debt until after he spoke with the government investigator and then he contacted the creditor. Applicant testified that he was told by the creditor that the car was sold for more than the loan owed, so he did not have a deficiency balance. He did not believe he has an outstanding debt with the creditor. He provided a letter from the collection company that held the loan stating his payment obligation had been fulfilled and there was no balance owed. This debt is resolved. (Tr. 59-62; GE 3; Answer to the SOR)

Applicant anticipated making his last payment of \$625 on a car loan in April 2023 for his 2017 vehicle. In October 2021, he purchased a truck for \$43,000 and has monthly payments of \$815. He is paying his daughter's student loans. He will pay his student loans when they are no longer deferred. He has about \$2,800 in his accounts. He mother moved in with him in 2019. She has a pension, receives Social Security payments and is on

Medicare. She pays her own expenses, except for food, which Applicant pays. (Tr. 23, 76-94)

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

Applicant's ex-wife testified on his behalf. She said Applicant had financial difficulties after their divorce. He was helping the children and fell behind on his obligations and this should not reflect on his good character. He may not have been proactive on his finances, but he is loyal, trustworthy, and responsible. His past military service should be considered. He is a good father, brother, and son. He is correcting his problems and moving forward. (Tr. 102-106)

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.

This concern encompasses concerns about a person’s self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (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 failed to timely pay his 2015 through 2020 federal income taxes and owed approximately \$24,039 in delinquent taxes. Despite being on notice from the IRS that he owed federal income taxes each year, he failed to pay them each year because he prioritized other bills, even after his income increased. In his 2020 SCA, he said he was going to start paying the taxes by the end of the year. He did not. After receiving the SOR, he made some payments to the IRS and later entered into an installment agreement in 2022. He also had a charged-off debt from 2014 for a vehicle repossessed with a balance of \$12,744. 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 repeatedly failed to pay his federal income taxes from 2015 through 2020, as alleged. He continued this pattern for tax year 2021 and did not anticipate timely paying his 2022 federal income taxes. His debts are recent and ongoing and his conduct casts doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems and failure to timely pay his federal income taxes to his 2014 divorce, purchasing a new house, and paying his children's expenses. He also said he was depressed. His divorce was beyond his control. Being responsible for house payments and his children was within his control and are normal expenses associated with having a family. He chose to pay his children's student loans instead of his taxes. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. He was on notice each year when he completed his tax returns that he owed taxes. He was not proactive in changing his withholdings. He repeated his pattern of failing to pay his taxes on time for six years as alleged in the SOR. He told the government investigator that he would begin repaying the taxes by the end of 2020. He then failed to timely pay his 2021 federal income taxes, which is not alleged. It was not until he received the SOR in January 2022 that he made payments. In February 2022 he entered into an installment agreement with the IRS. He anticipated he would owe federal income taxes for 2022 and would not timely pay them. He stated he would add the amount owed to his outstanding balance. This does not portray responsible conduct. There is insufficient evidence to find that Applicant's tax issues were totally beyond his control or that he acted responsibly under the circumstances. AG ¶ 20(b) has minimal application.

Applicant has not received financial counseling and there is not clear evidence that his financial problems are under control. There is evidence that Applicant has had an installment agreement with the IRS since February 2022, and he is in compliance. However, he does not have a reliable financial track record of satisfying his yearly tax obligation, which may jeopardize his current agreement. AG ¶¶ 20(c) does not apply. AG ¶ 20(g) applies.

The fact that Applicant has an installment agreement and has made payments "does not preclude careful consideration of Applicant's security worthiness based on longstanding prior behavior evidencing irresponsibility." ISCR Case No. 12-05053 (App. Bd. Oct. 30, 2014). An applicant who waits until his clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018) 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. ISCR Case No. 15-00216 at 4 (App. Bd. Oct. 24, 2016), *citing Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961) Applicant's failure to address his delinquent taxes until after realizing that they were an impediment to obtaining a security clearance "does not reflect the voluntary compliance of rules and regulations expected of someone entrusted with the nation's secrets." ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016.)

The charged off debt for the repossessed vehicle was resolved, but again it was not due to a good-faith effort. However, I find in his favor for this debt as there is no current obligation owed.

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.

Applicant's history of non-compliance with a fundamental legal obligation to timely pay his federal income taxes raises serious concerns. The record evidence leaves me with 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.f:	Against Applicant
Subparagraph 1.g:	For 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