



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



In the matter of:)
)
) ISCR Case No. 21-00283
)
Applicant for Security Clearance)

Appearances

For Government: William H. Miller, Esq., Department Counsel
For Applicant: *Pro se*

06/13/2023

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On March 2, 2022, Department of Defense issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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 effective June 8, 2017 (AG).

Applicant answered the SOR on May 13, 2022, and he requested a hearing before an administrative judge. The case was assigned to me on January 25, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 6, 2023, and the hearing was convened as scheduled on February 23, 2023. The Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection. The Government's exhibit list was marked as hearing exhibit (HE) I and its discovery letter sent to Applicant was marked as HE II. Applicant testified, but

did not offer any exhibits at his hearing. The record was kept open until March 10, 2023, to allow him to submit additional evidence. He did not submit any documentary evidence. DOHA received the hearing transcript (Tr.) on March 7, 2023.

Findings of Fact

Applicant admitted the SOR allegations, with explanations. His admissions are adopted as findings of fact. After a review of the pleadings and evidence, I make the additional findings of fact.

Applicant is 46 years old. He has worked for his current employer, a defense contractor, since November 2006, as an x-ray technician. He has an associate degree. He is divorced and he has eight children. (Tr. 6, 19-20; GE 1)

The SOR alleged that Applicant failed to file his 2000-2002 and his 2005-2019 federal income tax returns as required (SOR ¶ 1.a). It further alleged that he failed to file his 2000-2002 and his 2005-2019 state income tax returns as required (SOR ¶ 1.b). Applicant admitted these allegations in his security clearance application, his background investigation, his response to interrogatories, his SOR answer, and during his hearing testimony. Applicant admitted that he has not filed any of these past federal and state tax returns. He admitted he just did not put forth the effort to file his tax returns. He explained that when he paid for a tax preparation service to file his returns in the late 1990s and he did not receive a refund, he could not see the point in continuing to file his returns if he was not going to receive a refund---so he did not file. He only filed his 2003 and 2004 tax returns because he needed to do so in order to enroll in college. He also admitted he did not file his federal tax returns out of spite toward the IRS. He claims to have recently contacted another tax preparation service to help him file his past tax returns, but he provided no further information about this arrangement. His tax-filing issues remain unresolved. (Tr. 23-27, 40-42; GE 1-3)

The SOR also alleged Applicant owed two delinquent accounts totaling approximately \$4,000. (¶¶ 1.c-1.d) Applicant admitted owing these debts in his SOR answer. In his hearing testimony, he indicated that he had either settled or paid both debts. His most recent credit report in February 2023, supports his assertions because neither debt is listed therein. These debts are resolved. (Tr. 33-35; GE 5, SOR answer)

Applicant's annual salary is approximately \$81,000. He has approximately \$7,000 in his checking accounts. (Tr. 38, 42)

Policies

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 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.

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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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

AG ¶ 18 expresses the security concerns for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially applies:

(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.

The record evidence supports that Applicant failed to timely file his 2000-2002 and his 2005-2019 federal and state income tax returns as he was required to do. The evidence also supports that he incurred two delinquent debts. I find the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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 failed to take any meaningful action to address his delinquent tax-filing issues regarding his federal and state income tax returns for the years alleged. Neither of the above listed mitigating conditions apply to SOR ¶¶ 1.a and 1.b. Applicant stated he paid the two delinquent debts. His assertions are corroborated by his February 2023 credit report, which shows an absence of those two debts. AG ¶ 20(d) applies to SOR ¶¶ 1.c and 1.d.

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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant 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.

I considered Applicant's federal contractor employment. However, his non-filing of his federal and state tax returns over a multi-year period causes me to question his trustworthiness, reliability, and good judgment, especially because he cited as his reasons for not filing that it was not important enough for him to do so, and that he did not file out of spite toward the IRS.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the 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.b	Against Applicant
Subparagraphs: 1.c - 1.d	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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge