



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



In the matter of:)
)
) ISCR Case No. 22-01791
)
Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

06/20/2023

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On December 1, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on December 22, 2022, and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on January 30, 2023. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on February 15, 2023. As of April 3, 2023, he had not responded. The case was assigned to me on June 1, 2023. The Government exhibits included in the FORM are admitted in evidence without objection.

Findings of Fact

Applicant is a 48-year-old employee of a defense contractor. He has worked for his current employer since January 2020. He served on active duty in the U.S. military from 1992 until he was discharged with a general under honorable conditions discharge in 1994. He attended college for a period, but he did not earn a degree. He is married with two children, ages 22 and 19. (Items 2, 3)

Applicant filed a Chapter 13 bankruptcy case in December 2015. Under Schedule D, Creditors Who Have Claims Secured by Property, the petition listed mortgage loans of \$94,416 and \$9,345 (the house was valued at \$119,700). Under Schedule E/F, Creditors Who Have Unsecured Claims, there were no priority unsecured claims. Nonpriority unsecured claims totaled \$31,857. (Items 1-4)

In August 2020, the Chapter 13 bankruptcy case was converted to a Chapter 7 bankruptcy, and his dischargeable debts were discharged. The trustee reported that during the Chapter 13 bankruptcy, Applicant paid a total of \$17,296. Of that amount, \$4,418 went to attorney's fees, court costs, and trustee expenses and compensation; \$12,063 went to secured claims; and \$813 went to unsecured claims. (Items 1, 3, 4)

Applicant did not file his federal and state income tax returns for tax years 2018 and 2019. He submitted a Questionnaire for National Security Positions (SF 86) on April 30, 2020. He reported that he had not filed his 2018 income tax returns. He wrote that he was going to file them himself, so he would not have to pay anyone. He wrote that he planned to file his 2018 returns with his 2019 returns. (Items 1-4)

Applicant attributed his financial problems to his wife's medical condition, which caused her to be frequently out of work. He was interviewed for his background investigation in June 2020. He discussed his financial issues. He stated that his wife's medical condition was resolved through surgery about a year before the interview. He also indicated that his wife had been unable to work as many hours because of the COVID-19 pandemic and associated shutdowns. He stated that his wife filed her 2018 tax returns, and he was supposed to go with her to the tax preparer to have his returns prepared at the same time, but he did not go with her. He decided to file his returns without the assistance of a tax preparer in order to save money. His returns were more difficult than he anticipated, and he decided to wait and file them with his 2019 returns. He planned to pay to have the 2018 and 2019 returns prepared, and he would file the returns for both years in July 2020. (Item 3)

Applicant timely filed his 2020 and 2021 income tax returns. He responded to interrogatories in May 2022. He reported that he had still not filed the 2018 and 2019 returns. He wrote that his wife is disabled and unable to work, and she was in the process of applying for disability. He stated that they were struggling financially, and they could not afford the \$300 to \$400 for each year that the tax preparers wanted to charge him. (Items 3, 4)

Applicant wrote in his response to the SOR, "I was financially drained and could not afford to pay to have tax returns filed. I will get these filed with 2022 tax returns." He did not respond to the FORM, so there is no evidence that the returns have been filed. (Item 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 was unable to pay his debts and filed for bankruptcy protection. He did not file his 2018 and 2019 federal and state income tax returns. The above disqualifying conditions 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; 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 attributed his financial problems to his wife's medical condition that left her unable to work. Bankruptcy was a reasonable response to those issues. The bankruptcy, as alleged in SOR ¶ 1(c), is mitigated.

Applicant has still not filed his 2018 and 2019 federal and state income tax returns. 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 their legal obligations, such as filing tax returns when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information.

Applicant claimed that he could not afford to have someone prepare his returns. However, his wife filed her 2018 tax returns, and he was supposed to go with her to have his returns completed at the same time, but he did not go. I do not accept that in four years Applicant could not make arrangements to file his returns. There are no mitigating conditions applicable to the unfiled returns.

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.

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 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 F:	Against Applicant
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraph 1.c:	For 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