



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 21-01159
)	
Applicant for Security Clearance)	

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

05/01/2023

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns about his finances. The allegation that he intended to falsify his most recent security clearance application was not established. His request for a security clearance is granted.

Statement of the Case

On October 11, 2019, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew his eligibility for a security clearance required for his employment with a federal contractor. Based on the results of the ensuing background investigation, adjudicators for the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) could not affirmatively determine that it is clearly consistent with the interests of national security to grant Applicant’s request for a security clearance. On October 12, 2021, DCSA CAF issued to

Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline for financial considerations (Guideline F).

The DCSA CAF issued the SOR pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and Security Executive Agent Directive (SEAD) 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant timely responded to the SOR (Answer) and asked for a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on October 25, 2022, and I scheduled a hearing to be held on December 8, 2022, via video teleconferencing. The parties appeared as scheduled, and I received a transcript of the hearing (Tr.) on December 16, 2022.

Applicant testified in his own behalf and submitted documentary evidence identified as Applicant's Exhibits (AX) A - H. I held the record open after the hearing to receive from Applicant additional relevant information. He subsequently submitted 16 pages of state and federal tax documents identified collectively as AX I. Department Counsel proffered Government Exhibits (GX) 1 – 6, as well as a copy of an exhibit list, which is included as Hearing Exhibit (HX) 1. No objections to admissibility were raised by either party and all proffered exhibits were admitted. The record closed on January 3, 2023.

Findings of Fact

Under Guideline F, the SOR alleged that Applicant did not timely file his federal (SOR 1.a) and state (SOR 1.b) income tax returns for tax years 2015 through 2020; and that, for the 2012 and 2013 tax years, he incurred a debt for unpaid state taxes totaling \$21,229, of which he still owed \$12,847 (SOR 1.c). The SOR also alleged that Applicant owed a total of \$4,504 for six unpaid medical bills (SOR 1.d – 1.i); and that he owed another \$7,378 for two past-due or delinquent credit accounts (SOR 1.j and 1.k).

In response, Applicant admitted each allegation except SOR 1.d. Each response was accompanied by explanatory remarks, and he included documents in support thereof. (Answer) In addition to the facts established by Applicant's admissions, I make the following findings of relevant fact.

Applicant is a 36-year-old employee of a defense contractor, where he has worked since February 2018. From August 2009 until February 2018, he worked for another defense contractor. He first received a security clearance in 2009. (GX 1)

Between December 2009 and November 2014, his work for his prior employer was done almost entirely overseas. Except for two months of paid vacation in the United States each year, all his income was earned abroad. When he returned to the United States in 2014, his income fell by about half, causing him financial problems that coincided with other unforeseen financial demands. To make up for lost income, he started accepting temporary duty (TDY) assignments at various military customer facilities around the nation. Since starting work with his current employer he has continued working on TDY, during which he receives additional money for meals and incidentals, and is reimbursed for other work-related expenses. To the extent he was able to reduce out-of-pocket expenditures, he was able to save some of his per diem allowance. (GX 1; GX 3; Tr. 32 – 36, 50 – 53)

Between 2012 and 2016, Applicant was married and divorced twice. Before his first marriage, he had a son, now age 18, for whom he paid child support until 2010, when he was given sole custody of the child. He still supports his son with housing and ad hoc expenses; however, his son recently found employment with a large corporation that should make him financially independent of his father. (GX 1; GX 3; Tr. 34 – 37, 70 – 72)

As alleged, Applicant did not file his federal or state income tax returns for the 2015 through 2020 tax years. He also incurred a debt for unpaid state taxes. Applicant does not excuse his failure to file his returns as required, but he cited factors beyond his control that contributed to his initial failure to file in 2015. As noted, above, all of his income between 2009 and 2014 was earned abroad. As a result, he received certain exemptions from tax on his income. In 2012, he started using a tax preparation firm to prepare his taxes. In addition to filing complexities associated with income earned abroad, Applicant was working in a location that made it difficult for him to personally attend to his taxes. He claims that the tax firm advised him he did not have to file any state returns because he had lived and worked abroad for three consecutive years. After he returned from overseas, he learned this was not true and that he had incurred the state tax debt alleged at SOR 1.c. (Answer; GX 1; GX 3; Tr. 50 – 53, 73)

Applicant's return from abroad also coincided with his new and unexpected role as a single father. His son had been living since birth with the boy's mother; however, for reasons not clear from this record, Applicant was given sole custody in about 2010. Also, after Applicant stopped working abroad, his income fell from about \$140,000 overseas to about \$50,000 annually. Further compounding his financial problems was his employer's decision to include his per diem payments as reportable income. This increased his annual adjusted gross income and, accordingly, his federal and state income tax obligations. (Answer; Tr. 37 – 38, 40)

Applicant first failed to file his tax returns in 2016 for the 2015 tax year because he knew he would not have enough money to pay his tax bill. Thereafter, owing to a suddenly more complicated personal life, a lower level of income, and his own inability to properly file his returns, Applicant procrastinated in filing his tax returns for subsequent years and his unfiled tax returns "snowballed" on him. Among other factors contributing to his failure

to file his returns after 2015 were his frequent work away from home; back surgery in early 2017 for an injury he suffered in 2016 while helping a neighbor clear a fallen tree after Hurricane Matthew; and another injury suffered in a car accident during one of his TDY assignments in 2018. (Answer; GX 1; GX 3; Tr. 38 – 40)

In late 2019, around the same time Applicant submitted his most recent e-QIP, he engaged a different tax specialist to resolve his late filings. That process was then delayed several months in 2020 due to the COVID epidemic. Available information shows that all of his federal and state income tax returns were filed between February 2022 and November 2022. Once his returns were filed, it was determined he still owed \$12,847 in federal income taxes. Part of the filing process included establishment of a repayment plan with the IRS through which Applicant has resolved his federal income tax debt. (Answer; GX 1; GX 3; GX 4; AX E; AX I; Tr. 45 – 51, 53 – 60)

At the state level, a levy against Applicant's wages was obtained to resolve a \$21,229 tax debt for the 2012 and 2013 tax years. That debt resulted from the inaccurate advice he received from the first income tax specialist he used while working overseas. As of the SOR, that debt had been reduced to \$12,847; as of his response thereto, it was \$8,192; and when he appeared at his hearing it had just been paid off. (Answer; GX 1; GX 3; AX F; Tr. 37)

Applicant also accrued several past-due or delinquent medical bills due to his 2017 surgery and his 2018 car accident. He presented information that shows he paid or otherwise resolved the debts at SOR 1.e – 1.i. There is no information in the record about the \$2,976 medical debt at SOR 1.d other than its absence from the most recent credit report in the record, dated March 1, 2022. The SOR 1.d creditor is the same as SOR 1.f and 1.g, and Applicant testified the SOR 1.d debt likely was satisfied through his settlement of his other medical debts. However, he was unable to definitively establish that assertion. (Answer; AX A – C; Tr. 60 – 63)

Two other debts alleged at SOR 1.j and 1.k have been resolved. Those commercial debts became delinquent as a result of the reductions in his income from the state tax garnishment and his lower wages working in the United States. He settled the SOR 1.j debt for about one-fourth of the original debt. The creditor for the \$4,232 SOR 1.k debt cancelled that debt and issued Applicant an IRS Form 1099-C, requiring him to declare \$3,641 as income on his 2020 federal income tax return. His 2020 federal income tax return shows that he declared that amount as required. (Answer; GX 6; Tr. 63 – 66)

Applicant's current finances are sound. He has incurred no new unpaid debts and lives within his means. Now that his state tax debt is resolved, he has about \$583 more in each paycheck. As a result, he has a positive net cash flow of at least \$1,000 each month, and will be able to avoid going into debt when unexpected expenses arise. He intends to continue using his current tax specialist to prepare and file his federal and state income taxes each year. He also provided letters of recommendation and copies of his job performance appraisals and awards. Collectively, that information shows that he is a

hardworking, reliable, and professional employee, who is also a good father trying to meet his family and community obligations to the best of his ability. (Answer; AX G. AX H; Tr. 34)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). (See Directive, 6.3) Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest for an applicant to either receive or continue to have access to classified information. (See *Department of the Navy v. Egan*, 484 U.S. 518 (1988))

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion. (*Egan*, 484 U.S. at 528, 531) A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. (*Egan* at 531; see AG ¶ 2(b))

Analysis

Financial Considerations

The Government met its burden of producing sufficient, reliable information to support the SOR allegations that Applicant accrued significant past-due or delinquent debts. Available information also shows that he did not file his federal and state income tax returns as required for the 2015 through 2020 tax years, and that he incurred a significant debt for unpaid state taxes as a result. This information reasonably raises a security concern about Applicant's finances that is articulated at 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.

More specifically, available information requires application of the following AG ¶ 19 disqualifying conditions:

- (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.

Available information also requires consideration of the following pertinent AG ¶ 20 mitigating conditions:

- (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;

(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's debts arose under unusual circumstances that are unlikely to recur. Applicant weathered a significant decrease in income when his work abroad ended. He also incurred a significant state tax debt because of inaccurate advice from his previous tax specialist. He has increased monthly cashflow now that his wages are no longer being garnished, and even while he was subject to that garnishment, he negotiated settlements of his past-due medical and commercial debts. As to his income tax returns, he has now filed all his past-due returns; he has an effective tax specialist that he will use in all of his future filings; and he promptly paid the federal taxes due as determined in his late-filed returns.

As to whether Applicant acted in good faith to repay his creditors, or whether he acted responsibly in the face of unforeseen circumstances, the result is mixed. On the one hand, his state tax debt was resolved through an involuntary wage garnishment, and he did not start the process of filing his past-due returns until 2019, despite being aware of those discrepancies for at least four years. Yet he began the process of resolving his taxes and paying his other debts well before the SOR was issued. Also, circumstances beyond his control (medical problems, multiple extended periods of TDY, and the COVID pandemic) slowed his ability to completely resolve his financial and tax issues until 2022. Nonetheless, those issues were largely resolved before this hearing, and available information shows that similar financial and tax problems are unlikely to recur. On balance, I conclude the record shows that the security concerns under this guideline are mitigated.

I also have considered the potential application of the whole-person factors at ¶ 2(d). I note that his personal and financial circumstances have improved. He has a solid reputation for reliability and trustworthiness in the workplace and is regarded by those who know him as a responsible and committed single father. Available information shows that Applicant has acted responsibly in resolving his delinquent debts and improving his finances overall. The record evidence as a whole supports a fair and commonsense decision in favor of Applicant.

Formal Findings

Formal findings 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: FOR APPLICANT

Subparagraphs 1.a – 1.k: For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

Matthew E. Malone
Administrative Judge