



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



In the matter of:)
)
) ISCR Case No. 22-00884
)
Applicant for Security Clearance)

Appearances

For Government: Jenny Bayer, Esq., Department Counsel
For Applicant: *Pro se*

06/29/2023

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On September 7, 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 October 11, 2022, and requested a hearing before an administrative judge. The case was assigned to me on April 6, 2023. The hearing convened as scheduled on June 8, 2023.

Evidence

Government Exhibits (GE) 1 through 7 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) A through D, which were admitted without objection. The record was held open for Applicant to submit additional documentary evidence. He submitted an email and attached documents that I

have marked AE E and F. There was no objection to AE E, and it was admitted in evidence.

Department Counsel objected to the admission of AE F on the basis of authenticity and the lack of a verifiable source of the documents. Department Counsel also commented on the weight of the documents if the objection is overruled.

Applicant was provided an opportunity after Department Counsel's objection to submit additional matter. He submitted an email, which I marked AE G and admitted in evidence without objection.

AE F consists of excerpts of Applicant's bank account statements from June 2018 through May 2023. He stated that the actual bank statements are 268 pages, and he felt that it was unnecessary to send the full statements, which would have contained much irrelevant information. The excerpts purportedly show, with several months missing, \$700 monthly electronic payments to the IRS. I have considered all the evidence in this case, including Applicant's credible testimony and IRS tax transcripts from 2013 through 2021. The tax transcripts show that an installment agreement was established on February 27, 2018. Regular payments in accordance with the installment agreement do not appear on the 2013 tax transcript until December 2021, but I believe that is because payments were going to pay taxes for previous tax years. Tax transcripts for earlier tax years are not in the record, but tax transcripts for 2013, 2014, 2015, 2017, 2018, and 2019 report that the IRS withheld what would have been refunds for those years and transferred them to pay back taxes for 2003, 2006, 2007, and 2008. The payments reflected on the 2013 and 2014 tax transcripts perfectly align with the withdrawals in the offered exhibit.

The objection to AE F is overruled, and it is admitted in evidence. Department Counsel's email objecting to the document is marked Hearing Exhibit (HE) I. Department Counsel's comments on the weight of the documents are treated as argument.

Findings of Fact

I adopt any facts addressed in the above evidentiary discussion as a finding of fact. Additionally, I find that AE F accurately reflects withdrawals from Applicant's bank account to the IRS from June 2018 through May 2023 (addressed further below).

Applicant is a 63-year-old employee of a defense contractor, where he has worked since 2021. He served on active duty in the U.S. Air Force from 1978 until he was honorably discharged in 1987. He then served in the Air National Guard from 1987 to 2001. He was in the Inactive Reserve until he entered the retired rolls of the Air Force in 2020. He attended college for a period, but he has not earned a degree. He is twice divorced. He married his current wife in 2015. He has six children and three stepchildren. (Transcript (Tr.) at 24, 52-55; Applicant's response to SOR; GE 1-3; AE B, G)

Applicant has a history of financial problems and tax issues, going back to at least 2003. He attributed his financial issues primarily to his daughter who was born in 2003 with significant medical problems. His insurance did not cover all her expenses, and he had to pay a large amount out of pocket. Her condition is permanent and will require medical care throughout her life. He prioritized his daughter and worked multiple jobs, but he was unable to pay all his bills and taxes. He filed a Chapter 7 bankruptcy case in 2005, and his dischargeable debts were discharged the same year. (Tr. at 17, 29-31; Applicant's response to SOR; GE 1, 2, 4, 5, 7)

Applicant owed federal taxes for tax years 2003, 2006, 2007, 2008, 2013, and 2014. In 2014, the IRS withheld \$2,305 from what would have been a refund for tax year 2013 and applied it to his 2003 taxes. However, the IRS later assessed additional taxes, penalties, and interest for 2013 (discussed below). His 2003 taxes were paid in 2015 when \$6,180 was withheld from what would have been a refund for tax year 2014 and was applied to his 2003 taxes. The IRS withheld \$2,132 from what would have been that same refund and applied it to his 2006 taxes. The IRS later assessed additional taxes and interest for 2014 (discussed below). (Applicant's response to SOR; GE 7; AE D)

In 2016, the IRS withheld \$930 from what would have been a refund for tax year 2015 and applied it to his 2006 taxes. In 2018, the IRS withheld \$416 from what would have been a refund for tax year 2017 and applied it to his 2006 taxes. His 2006 taxes were paid in 2019 when \$1,715 was withheld from what would have been a refund for tax year 2018 and applied it to his 2006 taxes. In 2019, the IRS withheld \$416 from what would have been the same refund and applied it to his 2008 taxes. In April 2020, the IRS withheld \$2,468 from what would have been a refund for tax year 2019 and applied it to his 2007 taxes. (Applicant's response to SOR; GE 7; AE D)

In his Questionnaire for National Security Positions (SF 86) that he submitted in February 2015, Applicant reported his financial problems and tax issues. He reported that he owed \$47,000 to the IRS at one time. He wrote that he had worked multiple jobs to pay off his debts. He stated that his debt to the IRS was almost paid off. (GE 2)

Applicant had additional tax issues after he submitted the SF 86. He filed an extension for tax year 2013, which extended the due date until October 15, 2014. However, he did not file his federal income tax return for that year until February 2015. In June 2016, the IRS assessed \$9,376 in additional tax. With penalties and interest, the balance rose to more than \$14,000. (Tr. at 35-37; Applicant's response to SOR; GE 7; AE D)

Applicant established an installment plan with the IRS in February 2018 to pay \$700 per month by automatic withdrawal from his bank account. He provided documentation of monthly \$700 payments since June 2018. There were payments every month, except October 2018, August 2019, October 2019, December 2019, and March 2023. In other words, he made 56 payments over the course of 61 months, or about \$39,200. The payment in March 2023 was dishonored by Applicant's bank. It is likely that the other missing payments were also dishonored because Applicant did not

have sufficient funds in his account. (Tr. at 19-21, 37-40; Applicant's response to SOR; GE 7; AE D-F)

Because Applicant owed the IRS for previous tax years, regular payments through the installment agreement did not begin for tax year 2013 until December 2021. The IRS also reported a \$1,400 payment in December 2019. In April 2022, the IRS withheld what would have been his refund for tax year 2021 and transferred \$5,856 to his tax debt for 2013. In March 2023, the last payment was made through the installment agreement and his tax debt for 2013 was paid in full, leaving only his 2014 taxes to be paid. (Tr. at 37-41; Applicant's response to SOR; GE 7; AE D-G)

Applicant filed his federal income tax return for tax year 2014 on time. The federal income taxes owed were calculated at \$12,712, and \$21,025 was withheld from his pay. In March 2015, the IRS withheld what would have been his refund for tax year 2014 and transferred \$6,180 to his tax debt for 2003. However, in February 2017, the IRS assessed \$4,620 in additional taxes. The IRS added \$1,455 interest and \$1,064 penalties, including \$25 for the dishonored payment in April 2023. As of September 2022, he owed \$6,827 in taxes, interest, and penalties. The balance was reduced to \$6,139 as of May 2023. Applicant testified, as supported by an IRS document that I viewed over the computer screen but was not offered into evidence, that the balance for 2014 was down to \$5,237. There are no taxes owed for any other tax year. (Tr. at 16, 41-42; Applicant's response to SOR; GE 7; AE D-G)

Applicant filed his federal income tax return for tax year 2015 in September 2016. Since there is no indication that he requested an extension, the return was filed late. What would have been a refund of \$930 was transferred to his 2006 taxes. (Tr. at 45-46; Applicant's response to SOR; GE 7; AE D)

The IRS received Applicant's federal income tax return for tax year 2016 on May 1, 2017. Since there is no indication that he requested an extension, the return was filed about two weeks late. There are no taxes owed for 2016. (Tr. at 46-47; Applicant's response to SOR; GE 7; AE D)

Applicant filed his federal income tax return for tax year 2017 on time. What would have been a refund of \$416 was transferred to his 2006 taxes. (Tr. at 48; GE 7; AE D)

Applicant filed an extension for tax year 2018, which extended the due date until October 15, 2019. However, he did not file his federal income tax return for that year until December 2019, so the return was filed late. The IRS transferred \$1,715 from what would have been a refund to his 2006 taxes and \$1,214 to his 2008 taxes. (Tr. at 48; GE 7; AE D)

Because of COVID-19, the IRS extended the deadline to file tax year 2019 returns to July 15, 2020. See <https://www.irs.gov/newsroom/payment-deadline-extended-to-july-15-2020>. Applicant filed his federal income tax return for tax year 2019

in January 2021, which was late. The IRS transferred \$2,468 from what would have been a refund to his 2007 taxes. (Tr. at 49-50; GE 7; AE D)

Applicant and a partner started a company in 2020. Their taxes were complicated by their expenses. A family member who is an accountant advised him to work on getting all the receipts and documents and file his 2020 return with his 2021 return in 2022. He filed his federal income tax return for tax year 2020 in May 2022, which was late. The IRS transferred \$2,436 from what would have been a refund from 2020 to his 2013 taxes. (Tr. at 21-22, 50-51; Applicant's response to SOR; GE 7; AE D)

The IRS received Applicant's federal income tax return for tax year 2021 on June 10, 2022. Since there is no indication that he requested an extension, the return was filed late. The IRS transferred \$5,836 from what would have been a refund to his 2013 taxes. (Applicant's response to SOR; AE D)

Applicant has filed his federal income tax return for tax year 2022. He expected what would be a \$212 refund, which would be applied to his 2014 taxes. (AE C, D)

Applicant's daughter is now 20 years old and living in a skilled nursing facility. She receives Social Security benefits, which pays for some of the costs, and Applicant and his ex-wife also contribute. His finances are currently stable. He credibly testified that he intends to continue with the IRS installment agreement until the 2014 taxes are paid. He now fully understands the importance of filing his returns and paying his taxes on time. (Tr. at 17-18; 25-34, 44, 47-48, 54-55, 66)

Applicant submitted letters attesting to his excellent job performance and strong moral character. He is praised for his honesty, professionalism, dependability, trustworthiness, reliability, work ethic, and integrity. (AE A)

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 is potentially applicable in this case:

(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 did not file all his federal income tax returns when they were due, and he failed to pay his 2013 and 2014 federal income taxes when they were due. AG ¶ 19(f) is applicable.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following is potentially applicable:

(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 a history of financial problems and tax issues, going back at least to 2003 when his daughter was born with a significant and permanent medical condition. He worked multiple jobs but was unable to pay all his bills and taxes. He filed a Chapter 7 bankruptcy case in 2005 and his dischargeable debts were discharged the same year. Medical costs and tax issues continued after the bankruptcy.

Applicant owed additional federal taxes for 2013 and 2014 when the IRS assessed almost \$14,000 in additional taxes. Penalties and interest brought the total owed for those two years to about \$21,000. Additionally, he still owed for tax years 2003, 2006, 2007, and 2008. He established an installment plan with the IRS in February 2018 to pay \$700 per month by automatic withdrawal from his bank account for all his back taxes. He missed five payments, likely because there was not enough in his bank account, but he made 56 payments over the course of 61 months, about \$39,200. Additionally, between 2014 and 2021, the IRS withheld more than \$30,000 from what would have been refunds and transferred the money to pay his back taxes. His tax liability is now down to less than \$6,000.

Applicant was not as diligent as he should have been about ensuring that his federal income tax returns were filed on time and his taxes paid. However, all the returns have been filed, and Applicant made arrangements with the IRS to pay his back taxes and he is in substantial compliance with those arrangements. AG ¶ 20(g) is applicable, 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 returns are eventually filed, and the taxes paid.

I found Applicant to be honest and truthful. I am convinced that he has learned a valuable and costly lesson, that he will continue with the installment plan until his back taxes are paid, and that all future returns and taxes will be filed and paid on time. Security concerns about Applicant's finances are mitigated. See, e.g., ISCR Case No. 19-01624 at 4 (App. Bd. Aug. 29, 2022), in which the Appeal Board reversed the Administrative Judge's denial of a security clearance where the applicant initiated a repayment plan with the IRS three years before he completed the security clearance application and four years before issuance of the SOR; he had been in compliance with the plan for seven years; and he had paid off approximately 33% of the aggregate debt.

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 Guideline F in my whole-person analysis. I also considered Applicant's honorable military service and favorable character evidence.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated 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: For Applicant

Subparagraphs 1.a-1.c: For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge