



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



In the matter of:)	
)	
)	ISCR Case No. 22-01154
)	
Applicant for Security Clearance)	

Appearances

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

05/01/2023

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 August 19, 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.

Applicant answered the SOR on September 19, 2022, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on November 25, 2022. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The

Government's evidence is identified as Items 2 through 7 (Item 1 is the SOR). Applicant did not submit a response to the FORM or object to the Government's evidence. Items 2-7 are admitted into evidence. The case was assigned to me on January 27, 2023.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a-1.r except for 1.k, which he denied. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 42 years old. He married in 2021 and has no children. He attended technical college from June 2002 to May 2006 and earned an associate's degree. He also attended another college from August 2004 to May 2009 and earned a bachelor's degree. He then attended college from August 2010 to May 2011 but did not earn a degree. He is being sponsored for a security clearance, but apparently, he is not yet employed by his sponsor, a defense contractor.

Applicant attributed his financial hardship to work being slow and he was unable to find a job. He disclosed periods of unemployment from August 2010 to September 2011, January 2012 to May 2012, August 2012 to February 2013, and April 2020 to May 2021. He also reported he experienced underemployment. He stated in his SOR answer that when he graduated from college in 2009, he was overwhelmed by the magnitude of his student loans. He hoped to get a good job and begin paying them within six months. He was unable to get a job commensurate with his degree and had to accept lower-paying employment to pay his expenses. He further stated that he attempted to rectify his financial difficulties with loans but was unable to pay any "up-front payments required by the agencies on an exact date given." (Item 2)

Applicant also stated in his SOR answer that he has a hearing disability that makes it challenging to rectify his financial issues over the phone. He said, "I have taken the necessary steps with the granting agencies in a good-faith effort to repay if current debt could be restructured based on current income, resolve some of the debt in full, and/or to make restitution with set monthly payments." (Item 2) He did not provide documents to show what specific agreements or steps he has taken toward a particular debt. He also hoped to use future income tax refunds to satisfy his debts. (Items 2, 3, 4)

The SOR alleged 14 delinquent debts totaling approximately \$114,000 (SOR ¶¶ 1.a through 1.n), additional allegations for failure to pay federal income taxes for tax years 2017, 2018, and 2019 (SOR ¶ 1.o - \$8,892), and failure to pay state income taxes for tax years 2015, 2017, 2018, and 2019 (SOR ¶ 1.p - \$4,521). The SOR also alleged Applicant failed to timely file his 2017 and 2018 federal income tax returns and his 2017 state income tax return (SOR ¶¶ 1.q-1.r).

Applicant's SOR admissions, SOR answer, statements made to the government investigator that were affirmed in his interrogatories, tax transcripts, and credit reports

from July 2021, February 2022, and July 2022 corroborate the SOR allegations. (Items 2, 3, 4, 5, 6, 7)

In Applicant's answer to the SOR regarding the allegations in ¶¶ 1.c, 1.f, 1.g, 1.h, 1.j, 1.l, 1.m, 1.n, 1.o, and 1.p, he states that he will pay the debts or enter into a settlement agreement if he is able to attain a security clearance and employment. These debts are unresolved.

In Applicant's answer to the SOR regarding the allegations in SOR ¶¶ 1.d and 1.e, his delinquent student loans (approximately \$99,875), he provided a copy of correspondence with the Department of Education from July 2022 indicating his student loans were in forbearance under the CARES Act and were not currently being collected. His loans were delinquent prior to the CARES Act. During his August 2021 interview with a government investigator, which he affirmed its accuracy in his July 2022 interrogatories, Applicant said that he got behind on paying his loans in August 2017, and he could not afford payments. He said he experienced financial hardship at that time and then later during the pandemic. No evidence was provided regarding any payments he made on the student loans or attempts to address them prior to the forbearance. He stated in his SOR Answer that he has submitted a loan rehabilitation income and expense form to the creditor so he can get an affordable monthly payment plan. This will not be acted upon until the CARES Act expires. He is also requesting a \$10,000 to \$20,000 loan forgiveness to be credited to the balance he owes. (Item 4)

Applicant admitted that he owed the IRS approximately \$8,892 for delinquent taxes for tax years 2017, 2018, and 2019. In his SOR answer he stated: "Payment has been stopped until income is acceptable to satisfy debt owed. If I attain this clearance and job I will be able to agree to a settlement to satisfy debt." (Item 2) He did not provide evidence that he made any payments. He provided a document from the IRS that stated he had visited the IRS Taxpayer Assistance Center in his home state. The letter references tax year 2019 and states: "[Applicant] has come into the Taxpayer Assistance Center to get a letter that says he is in Currently Not Collectable status. This letter is to show that he is indeed currently not collectable for 2019." No other information was provided regarding payment of his federal tax debt. (Item 2)

In response to government interrogatories, Applicant stated he had filed his 2017 and 2018 federal income tax returns in July 2020. He disclosed that he owed federal income tax for tax years 2017, 2018, and 2019. He provided copies of federal income tax return forms for 2017 and 2018, but they were not signed and there is no proof they were mailed and accepted. IRS account transcripts from July 2022 reflect the 2017 and 2018 tax returns had not been filed. (Items 2, 4)

The SOR alleged that Applicant failed to pay his 2015, 2017, 2018, and 2019 state income taxes. It also alleged that he failed to timely file his 2017 state income tax return. Applicant indicated in his response to interrogatories that he filed his 2015, 2017, 2018 state tax returns in January 2021. State tax forms he provided are unsigned and there is no proof that he mailed or filed his 2017 return electronically. A letter included in his

answer to the SOR from his state department of revenue from July 2016 shows Applicant was assessed \$45 for tax period 2015. There is no proof it was paid. Another letter from January 2021 to Applicant in bold letters and capitalized says "REMINDER-WE HAVE NOT RECEIVED YOUR TAX RETURN." It also states that he owes \$1,050 for tax year 2017. Letters for tax years 2018 and 2019 show tax debts of \$1,711 and \$1,519, respectively. Applicant did not provide evidence that he paid these taxes. (Item 2)

Applicant provided no explanation for his failure to timely file his federal and state income tax returns. Transcripts show his total federal tax balance is \$8,892. It is unknown how the "currently not collectable" status for his 2019 taxes is viewed, as it appears the amount owed for that year (\$3,810) is included in the total balance. Although 2019 taxes may not currently be collectible, it does not mean it was not owed or will not be collected in the future. (Items 2, 4)

Applicant denied owing the debt in SOR ¶ 1.k (\$719) claiming he never signed a contract with the creditor, and that he has contacted the creditor and collection company numerous times. The debt is not listed on his most recent credit report and is resolved in his favor.

Regarding the debt in SOR ¶ 1.a (\$1,187), Applicant admitted owing the debt and merely states it was charged off and should be removed from his credit report. It is unresolved. For the debts in SOR ¶¶ 1.b (\$56) and 1.i (\$454), he admitted the debts and noted the collection accounts were charged off and will not be reopened for payment. No evidence was provided to show he resolved these debts.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (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 is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns

about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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;
- (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 has approximately \$15,198 of delinquent consumer debt and \$99,875 of student loan debt that is presently in forbearance but was delinquent prior to the CARES Act moratorium on student loans. He owes \$8,892 for delinquent federal income taxes and approximately \$4,325 for delinquent state income taxes. In addition, he failed to timely file his 2017 and 2018 federal income tax returns and his 2017 state income tax return. The above disqualifying conditions apply.

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 persons 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;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve; 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 did not provide evidence that he has paid or attempted to pay any of his delinquent debts. He began having financial difficulties in 2017 due to underemployment and unemployment. He did not provide an explanation for why he failed to timely file his federal income tax returns for 2017 and 2018, nor did he provide proof that they are now filed. He failed to provide proof that his 2017 state income tax return is filed. Applicant failed to provide evidence of any actions he may have taken at the time to make payment arrangements with the IRS or his state tax authority. Although, his student loans are in forbearance due to the CARES Act, they were in delinquent status before then, and he said he has been unable to pay them since 2017. Applicant's plan to resolve most of his debts is contingent upon attaining a security clearance for a job he has been offered but not yet started.

AG ¶ 20(a) does not apply because Applicant's financial problems are ongoing, unresolved, and there is insufficient evidence they are unlikely to recur. His unemployment and underemployment may have been beyond his control. For the full application of AG ¶ 20(b) Applicant must have acted responsibly under the circumstances. Applicant provided minimal evidence regarding actions he has taken to resolve any of his delinquent debts. There is no evidence he has received financial counseling or has made a good-faith effort to resolve his debts. AG ¶¶ 20(c), 20(d), and 20(g) do not apply. I have given Applicant credit regarding the debt he disputed (SOR ¶ 1.k) and find AG ¶ 20(e) applies to that 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 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.

In ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis omitted, the DOHA Appeal Board has commented:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with these things is essential for protecting classified information. ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Someone 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. *See, e.g.*, ISCR Case No. 14-01894 at 5 (App. Bd. August 18, 2015). *See Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961). ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).

Applicant has not met his burden of persuasion. He does not have a reliable financial track record of paying his debts and filing and paying his federal and state income tax returns and taxes. The record evidence leaves me with serious 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.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l-1.r:	Against 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