



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



In the matter of:)
)
) ISCR Case No. 22-01340
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

07/06/2023

Decision

Dorsey, Benjamin R., Administrative Judge:

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

Statement of the Case

On November 17, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. On December 1, 2022, Applicant responded to the SOR and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on February 7, 2023. A complete copy of the file of relevant material (FORM) was provided to Applicant, who had 30 days after receipt of the FORM to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on March 2, 2023, but he did not submit a response. The case was assigned to me on June 1, 2023. The Government exhibits included in the FORM (Items 1-6) are admitted in evidence without objection.

Findings of Fact

Applicant is a 55-year-old employee of a defense contractor for whom he has worked since January 2013. He was married from 1986 until he divorced in 2008. He remarried in 2010. He has four adult children and five adult stepchildren. (Item 2)

In the SOR, the Government alleged that Applicant failed to timely file his federal income tax returns for tax years 2016, 2017, 2018, 2019, and 2021, despite being required to do so. It also alleged that he failed to timely file his state income tax returns for the same tax years, as well as for the 2020 tax year. Finally, it alleged that he was indebted to the Internal Revenue Service (IRS) for delinquent federal taxes in the amount of \$5,797 for tax year 2020. In the Answer, Applicant admitted all the SOR allegations with additional comments. His admissions are incorporated in my findings of fact. The SOR allegations are established by his admissions and the Government's exhibits included with the FORM. (Items 1-4)

Applicant filed his late 2016, 2017, 2018, and 2019 federal income tax returns with the IRS in July 2021. He also filed his late 2016, 2017, 2018, 2019 and 2020 state income tax returns in July 2021. He filed these income tax returns after he submitted his May 2021 Questionnaire for Investigations Processing (SF 86). He provided documentary corroboration of these filings in the form of signed and unsigned copies of his relevant income tax returns. Most of the income tax returns were prepared by a professional tax preparer. He claimed that he filed his late federal and state income tax returns for tax year 2021, without providing corroborating evidence. (Items 1-4)

Applicant claimed that he resolved his delinquent federal taxes for tax year 2020. A November 2022 letter from the IRS shows that a portion of his 2018 tax year refund was applied to his 2020 tax delinquency, reducing his 2018 refund to \$9.52. The IRS would not have provided this refund if he still owed delinquent taxes for tax year 2020. Therefore, I find that he resolved his 2020 tax year delinquency in November 2022. (Items 1-4)

Applicant claimed that he did not timely file the aforementioned income tax returns because he was depressed after separating from his wife, because of laziness, and because of the COVID-19 pandemic. His granddaughter passed away in 2021, and he claimed that her death caused him to miss the deadline for filing his 2020 state income tax returns. He claimed that he will comply with his income tax return filings in the future. In April 2022, he submitted a personal financial statement showing that he has a surplus of about \$375 after his expenses are paid at the end of each month. (Items 2-4, 8; FORM Response)

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 failed to timely file his federal income tax returns for the 2016 through 2019 and 2021 tax years. He failed to timely file his state income tax returns for the 2016 through 2021 tax years. He owed the IRS delinquent federal taxes for the 2020 tax year. The evidence is sufficient to raise the above disqualifying condition.

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;

(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.

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).

While Applicant has now filed most of his late federal and state income tax returns, he has not provided documentary evidence that he filed his federal and state income tax returns for tax year 2021. It is reasonable to expect him to present documentation about the resolution of his claimed income tax filings. See, e.g., ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 16, 2016). Therefore, he has not provided sufficient evidence that he has remedied his failure to file his income tax returns.

For the relevant income tax returns Applicant has filed, he did so only after beginning the clearance process. An applicant who begins to resolve security concerns only after having been placed on notice that his or her clearance is in jeopardy may lack the judgment and willingness to follow rules and regulations when his or her personal interests are not threatened. See, e.g., ISCR Case No. 17-04110 at 3 (App. Bd. Sep. 26, 2019). This timing cuts against his efforts to show that he acted responsibly under the circumstances or in good faith. None of the mitigating conditions fully apply to his failure to timely file his federal and state income tax returns and those allegations are not mitigated.

With respect to Applicant's delinquent federal taxes for tax year 2020, as he has provided sufficient evidence that he has resolved those taxes, I find that AG ¶ 20(g) applies. He has mitigated the SOR allegations concerning his delinquent 2020 taxes.

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 that 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.

Benjamin R. Dorsey
Administrative Judge