



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



In the matter of:)
)
XXXXXXXXXXXXXXXXXX) ISCR Case No. 22-01692
)
Applicant for Security Clearance)

Appearances

For Government: A. H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

07/18/2023

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant has provided evidence sufficient to mitigate the national security concern arising from his delinquent federal income taxes for tax year 2014 and his failure to file timely his state income tax returns for tax years 2014 and 2015. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted his security clearance application (SCA) on September 20, 2021. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on September 12, 2022, detailing security concerns under Guideline F, financial considerations. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant submitted an undated answer to the SOR (Answer) and elected a decision on the written record by an administrative judge of the Defense Office of

Hearings and Appeals (DOHA). Department Counsel submitted the Government's file of relevant material (FORM) on January 3, 2023, including documents identified as Items 1 through 6 (Items). DOHA sent Applicant the FORM on January 4, 2023, and he received it on March, 25, 2023. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not respond to the FORM. The SOR and the Answer are the pleadings in the case. (Items 1S and 1A, respectively.) Items 2 through 6 are admitted without objection. The case was assigned to me on June 1, 2023.

Findings of Fact

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact:

Applicant is 47 years old and a high school graduate with some college credits. He was married from June 1995 to June 2005. He has 19 year-old twins from that marriage; they do not live with him. He remarried in June 2005 and has two children ages 12 and 15 from that marriage; they reside with him. He has two adult stepchildren. (Items 2 and 3.) Except for a brief period of unemployment from January 2014 to March 2014, he has worked full-time since July 2011. From February 2020 to the present, he has worked for a defense contractor. (Item 2.)

Under Guideline F, the SOR alleged that Applicant (1) is indebted to the Internal Revenue Service for \$3,352 for tax year 2014; and (2) failed to file state income tax returns for tax years 2014 and 2015. (Item 1S.) He admitted those allegations. (Item 1A.)

During Applicant's October and November 2021 personal subject interviews (PSI), he discussed his financial matters. He identified seven accounts with nominal balances ranging from \$61 to \$864 totaling \$2,404. (Item 3.) Those accounts are not reported on his January 3, 2023 credit report and are not alleged in the SOR. (Items 1S and 6.)

Applicant also discussed three significant debts. The first was a child support debt for \$32,000. In May 2015 he began a court-approved payment plan and paid off that debt in February 2021. (Item 3.) That debt was not alleged in the SOR and was not reported on the Government's credit reports. (Items 1S, 5 and 6.)

The second was a debt Applicant owed to the state department of revenue for \$14,146 of taxes for tax years 2014 and 2015. In 2015, he started a payment plan. He was on that plan as of his PSI. That debt was not alleged in the SOR and was not reported on the Government's credit reports. (Items 1S, 5 and 6.)

The Government's interrogatories asked Applicant to provide state tax account transcripts (or the equivalent) for years 2014 and 2015. He responded: "I was told that [the state] does not issue Tax Account Transcripts at all. Only the IRS does. I requested [IRS] copies for the years in question (2014 & 2015) online." He attached IRS transcripts for tax years 2014 and 2015. They shed no light on his state tax filings. (Item 4.)

The third was a \$14,434 debt for an auto loan Applicant took out in May 2015. In 2017, he changed jobs and did not have enough money to make his payments. The auto was repossessed in July 2017 and sold, which left a balance due of \$7,000. He began a payment plan on November 19, 2021, of \$300 a week to pay the balance. (Item 3.) This account was reported in collection on the Government's October 2021 credit report. (Item 5.) It was not reported on the Government's January 3, 2023 credit report and was not alleged in the SOR. (Items 1S and 6.)

Applicant's most recent credit report shows 10 accounts PAYS AS AGREED with zero past-due amounts and no tax delinquencies or tax liens. (Item 6.) His earlier credit report does not show any tax delinquencies or tax liens. (Item 5.) Other than Applicant's admissions to the two SOR allegations, there is no other record support for the SOR's two allegations. (Item 1A.)

Law and Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(a), 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. A2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information 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. Under Directive ¶ E3.1.15, 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.

Analysis

Guideline F, Financial Considerations

The security concern relating to Guideline F 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. . . .

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. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Guideline F notes conditions that could raise security concerns under AG ¶ 19. The following condition is the only one applicable in this case:

- (f) failure to file . . . annual . . . state . . . income tax returns . . . or failure to pay annual Federal . . . income tax as required.

Applicant's unpaid federal income taxes and his failure to file state income tax returns are established by the admissions in his Answer. AG ¶19 (f) applies. The next inquiry is whether any mitigating conditions apply.

Guideline F 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; 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.

I considered mitigating condition AG ¶ 20(a). Applicant's federal income tax delinquency of \$3,352 occurred in 2015 for tax year 2014, almost 10 years ago. This was a one-time occurrence and has not recurred. In fact, other than his Answer to the SOR, the Government submitted no evidence to support this allegation. In addition, the magnitude of this delinquency does not raise any national security concerns. SOR ¶ 1.a has been mitigated under AG ¶ 20(a).

According to Applicant's PSI, he started a payment plan in 2015 to pay \$14,146 of back state income taxes for tax years 2014 and 2015. He was still on that plan at the time of his PSI. I will take administrative notice that tax authorities customarily do not allow a delinquent taxpayer to begin a payment plan, unless the taxpayer has first filed returns for the tax years in question. Therefore, he must have filed his 2014 and 2015 returns in order to have embarked on a payment plan. SOR ¶ 1.b has been mitigated under AG ¶ 20(g).

Whole Person Concept

Under AG ¶ 2(a), 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. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the "whole-person" concept and factors). In my analysis above, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

Applicant leaves me with no questions about his eligibility and suitability for a security clearance. Therefore, I conclude that Applicant has provided sufficient evidence 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:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Philip J. Katauskas
Administrative Judge