



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



In the matter of:)
)
) ISCR Case No. 20-00097
)
Applicant for Security Clearance)

Appearances

For Government: Brittany White, Esq., Department Counsel
For Applicant: *Pro se*

07/11/2023

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 May 13, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant provided a response to the SOR on June 5, 2022 (Answer). He requested a hearing before an administrative judge. The case was assigned to me on March 14, 2023.

The hearing was convened as scheduled on June 7, 2023. At the hearing, I admitted Government Exhibits (GE) 1 through 7 without objection. Applicant testified at hearing but did not present any documentary evidence. At Applicant's request, I left the record open until June 21, 2023, for him to provide post-hearing documents. He timely submitted Applicant Exhibit (AE) A that I admitted without objection. I received the transcript (Tr.) of the hearing on June 14, 2023.

Findings of Fact

Applicant is a 46-year-old employee of a government contractor for whom he has worked since 2015. He has been married since 2014. He has an adult child, an adult stepchild, and a 15-year-old stepchild. He earned a high school diploma in 1994. (Tr. 42-43; GE 1, 2)

In the SOR, the Government alleged Applicant's failure to timely file his federal income tax returns for tax years 2011 through 2018, as required (SOR ¶¶ 1.a through 1.h). It also alleged his 13 delinquent debts totaling approximately \$47,000 (SOR ¶¶ 1.i through 1.u). These delinquencies consist of car loans (SOR ¶¶ 1.i through 1.k), personal loans (SOR ¶¶ 1.l and 1.o), loans to purchase furniture (SOR ¶¶ 1.m and 1.n), credit cards (SOR ¶¶ 1.p through 1.r), and utilities (SOR ¶¶ 1.s through 1.u). He admitted the SOR allegations with additional comments. His admissions are adopted as findings of fact. The SOR allegations are established through his admissions and the Government's exhibits. (Tr. 47-54; SOR; Answer, GE 1-7)

Applicant late filed his 2011 through 2017 federal income tax returns by June 2021. He late filed his 2018 federal income tax returns in June 2023. He has settled or brought current the accounts listed in SOR ¶¶ 1.i and 1.m. through 1.u. He has not resolved the accounts listed in SOR ¶¶ 1.j through 1.l. After he submitted his December 2017 Electronic Questionnaire for Investigations Processing (SF 86), he contacted the creditors of the debts listed in SOR ¶¶ 1.j through 1.l but could not afford the payments they required because he was paying off other, smaller SOR debts. (Tr. 23-27, 28-38, 43-55; Answer; GE 2, 3; AE A)

Applicant failed to timely file his federal income taxes because he procrastinated and because he thought he would owe more in taxes than he could afford to pay. He attributed his inability to pay his financial delinquencies to his stepdaughter's special needs and the costs associated with her care. His financial situation worsened when his wife stopped working in 2016 to take care of his stepdaughter full time. His wife also has chronic medical conditions that keep her from working. His stepdaughter's medical condition will require full-time assistance for the rest of her life. (Tr. 45-47, 57-58; GE 2)

Applicant has federal income tax deficiencies and consumer delinquencies that are not listed in the SOR. While he late filed them in June 2023, he did not timely file his federal income tax returns for the 2019 through the 2021 tax years, as required. He owes about \$45,000 in delinquent federal taxes for the 2013 through 2017 tax years. He also believes that he owes delinquent federal taxes for the 2019 tax year, but he does not know the amount. He does not have a payment plan in place to resolve these delinquent federal taxes. He is no more than three payments past due on his mortgage, and he has an additional collection account in the amount of \$10,180 for an unsecured loan that he opened in November 2021. Any adverse information not alleged in the SOR will not be used for disqualification purposes. I will consider it when assessing the application of mitigating conditions and for the whole-person analysis. (Tr. 44-47; GE 6, 7; AE A)

Applicant earns \$86,000, annually. His stepdaughter receives about \$900 in monthly social security benefits. On the day of the hearing, he had about \$700 in a savings account and \$1,100 in a checking account. He has about \$15,000 in a retirement account. In a September 2019 personal financial statement, he claimed he had about \$91 in surplus earnings at the end of each month. He does not know what his current monthly expenses are because his wife handles the budget. (Tr. 58-63; GE 3)

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 are potentially applicable in this case:

- (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 failed to timely file his federal income tax returns as required for the 2011 through 2018 tax years. He also had 13 delinquent debts totaling about \$47,000. The above-referenced disqualifying conditions are applicable.

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.

As Applicant has settled or brought current the debts in SOR ¶¶ 1.i and 1.m. through 1.u, and those delinquencies were caused by his family's health problems that were beyond his control, I find that those allegations are mitigated. However, the remainder of his financial issues are more problematic.

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 settled several of his delinquent accounts, he has not made any payment on his three largest delinquent accounts. He late filed his outstanding federal income tax returns, but he did so well after he began the clearance process, undermining his efforts to show that he did so in good faith. 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). He owes a significant amount of delinquent federal taxes and does not have a payment arrangement with the IRS. He is late on two other accounts that were not listed in the SOR. His financial issues are ongoing, and he has not established a track record of financial responsibility.

Applicant acknowledged that procrastination and his belief that he might not be able to afford his tax bill caused his failures to timely file his federal income tax returns. These conditions were not largely beyond his control. AG ¶ 20(g) partially applies, as Applicant has now filed his late income tax returns. However, the timing of these filings and his delinquent taxes preclude full applicability of that mitigating condition. None of the mitigating conditions fully apply to his failure to timely file his federal income tax returns or the financial delinquencies alleged in SOR ¶¶ 1.j through 1.l.

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.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude 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.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j-1.l:	Against Applicant
Subparagraphs 1.m-1.u:	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