



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



In the matter of:)	
)	
)	ISCR Case No. 22-02388
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey M. DeAngelis, Esq., Department Counsel
For Applicant: *Pro se*

08/10/2023

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 December 30, 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 February 8, 2023, and he 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 March 26, 2023. 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 3 through 7 (Item 1 is the SOR; Item 2 are transmittal documents). Applicant submitted a response to the FORM. He did not have any objections to the Government's evidence. He provided documents that are marked as Applicant Exhibits (AE) A through K. There were no objections, and they were admitted in evidence. The case was assigned to me on June 1, 2023.

Findings of Fact

Applicant admitted both SOR allegations. 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 41 years old. He graduated from high school in 2001. He has completed some college classes but not a degree. He served on active duty in the military from 2004 to 2014 and was honorably discharged. He served in the National Guard from 2014 to 2018 and was honorably discharged. He never married and has no children. He has worked for a federal contractor since November 2018. (Item 4)

In May 2021 Applicant completed a security clearance application (SCA). In it he disclosed that he failed to file his 2017, 2018, 2019 and 2020 federal income tax returns. He stated in the SCA for each tax year that he initially failed to file because "due to finding time to go to a tax preparer and missed the filing deadline. I had planned to file late, and I intended to 'get around to it' but I never did, and it snowballed." He further stated:

I am going to sit down with a tax preparer to attempt to correct this situation and pay any applicable fees and back taxes required (or at least set up and start a payment plan) by the time I am interviewed. The delay is all of my own doing and I accept that responsibility. (Item 4)

In June 2021 Applicant was interviewed by a government investigator. He was questioned about his failure to timely file his income tax returns. He told the investigator he did not have a good reason and he was going to speak to a tax preparer to file the delinquent returns and would provide an update. He said it would never happen again and in the past seven years he had not failed to file any other federal, state, or other tax returns as required by law. (Item 5)

Applicant completed government interrogatories in March 2022. He attached email correspondence between him and a tax preparer from March 2022 acknowledging they had been employed by Applicant and his request for documented verification to show his tax returns were being prepared. In the email correspondence, the tax preparer notes he will be preparing Applicant's 2016 through 2021 federal and state income tax returns. Applicant acknowledged he would need the preparer to complete his 2016 and 2017 state income tax returns. He lived in a state during the other years that does not have income taxes. Applicant's email stated he had not filed his tax returns since 2015. On April 28,

2022, Applicant signed a power of attorney allowing the tax preparer to complete his income tax returns. (Item 6)

Applicant stated in his interrogatories that he did not have a good reason for his failure to timely file his income tax returns, beyond his own anxiety. He noted he had engaged a tax preparer to remedy the issue. He said he had panicked when he was late paying taxes at one point, and it then snowballed and each year he worried more and more. At that time, his income tax returns were not yet filed but the tax preparer was working on them. (Item 6)

Applicant provided an updated response to government interrogatories in October 2022. He explained that his tax service requested his IRS W-2 forms to complete his 2017 and 2018 state tax return. Applicant was advised that the Defense Finance & Accounting Service (DFAS) did not keep these documents beyond five years. He then requested the information through his state department of revenue. (Item 6)

In Applicant's SOR answer, he stated that in December 2022 he mailed his 2016 through 2019 federal income tax returns to the IRS. Due to their age he could not file electronically. His 2020 and 2021 federal income tax returns were filed electronically and accepted by the IRS on February 7, 2023. As of the same date, he also filed his state income tax returns for 2017 and 2018. He was still attempting to locate the income data necessary to file his 2016 state income tax return and had made several attempts through various agencies to retrieve the data. Once he retrieved the data, his tax preparer would complete the 2016 state income tax return. Applicant provided appropriate documents to corroborate his actions. (Item 2)

In Applicant's response to the FORM, he provided federal income tax transcripts. His 2016, 2017, and 2018 tax year transcripts reflect they were received in December 2022. His 2019 tax year transcript reflects it was filed by April 15, 2020, which would be timely. The 2019 tax transcript does not have any financial data in it. It lists Applicant's adjusted gross income as \$1.00. It notes a representative was appointed on April 6, 2022, and the IRS received the tax balance owed of \$199 on March 27, 2023. This is consistent with Applicant's other documents and statements that he did not file timely for 2019. His other documents show that for tax years 2020 and 2021, he filed electronically on February 7, 2023. He electronically filed his 2022 federal tax return on April 25, 2023. He owed \$466 for tax years 2020 and \$631 for tax year 2021. He paid the balances on March 27, 2023. (AE A-K)

Applicant confirmed in his FORM response that his 2017 and 2018 state income tax returns were mailed in February 2023. He said he was still unable to retrieve information he needed to file his state tax return for 2016. It is unclear why this information is not available from his 2016 federal income tax return. He has continued to send letters and email requests to various state agencies to obtain the information. He intends to file his 2016 state income tax return when he retrieves the necessary documents. (AE I)

Applicant stated in his FORM response that he has addressed all of the issues raised in the SOR. He does not intend to fall into the trap of anxiety and complacency again. He was dealing with the death of his father in August 2022 and the uncertainty of whether the contract for his job would be renewed. He does not use these facts as an excuse. He got behind on his tax filings and let his worry about how much he might owe in taxes override his good judgment. He stated it would not happen again. He understands he made a mistake and can see the consequences for any further failings. (AE I)

Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes. However, it may be considered in the application of mitigating conditions, in making a credibility determination, and in a whole-person analysis.

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 is potentially applicable:

(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 2016, 2017, 2018, 2020 and 2021 federal income tax returns. I conclude that based on all of the evidence, he did not timely file his 2019 federal income tax return. He failed to timely file his 2016 through 2018 state income tax returns. The above disqualifying condition applies.

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; 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 voluntarily disclosed in his May 2021 SCA that he failed to file federal income tax returns for multiple years. In June 2021, he explained to the investigator that he was hiring a tax professional to help him file his delinquent tax returns. He admitted he did not have a valid excuse for not timely filing, other than anxiety and then each year it snowballed. In March 2022, he hired a tax professional to help him. He mailed his federal income tax returns for 2016, 2017, 2018, and 2019 in December 2022, and his 2020 and 2021 were electronically filed in February 2023. Applicant provided documentation that all of his delinquent federal income tax returns are now filed, and he paid the taxes that were due. He provided documentation that his 2017 and 2018 state income tax returns have been filed. Despite his best efforts, he has been unable to find the necessary documents to file his 2016 state income tax return due to the length of time.

I have considered all of the mitigating conditions. I find AG ¶ 20(g) applies in that his income tax returns have essentially all been filed. I find none of the other mitigating

conditions apply. Although there is some mitigation, it is insufficient to overcome the security concerns raised by his failure to abide by the law and exercise good judgment over many years.

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.

The DOHA Appeal Board has held that:

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. 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.b:	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