



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



In the matter of:)
)
) ISCR Case No. 22-01520
)
Applicant for Security Clearance)

Appearances

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

08/24/2023

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On September 6, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on September 20, 2022, and requested a hearing before an administrative judge. The case was assigned to me on April 19, 2023.

The hearing convened as scheduled on July 31, 2023. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) 1 through 10, which were admitted without objection.

Findings of Fact

Applicant is a 62-year-old employee of a defense contractor. He has worked for his current employer since December 2020. He served on active duty in the U.S. military from 1978 until he retired with an honorable discharge in 2000. He attended college for a period without earning a degree. He married for the third time in 2015 after his first two marriages ended in divorce. He has an adult child. (Transcript (Tr.) at 19-21; GE 1, 2)

Applicant has a history of tax problems, including not filing his federal income tax returns for 2014 through 2020 when they were due. He stated, without documentation, that he thought the 2014 tax return had been filed. He has spent much of his time since 2010 working overseas for defense contractors. His tax issues started in about 2013 when he was evacuated to the United States for medical issues. He returned overseas about eight months later, but after a few months, he had to be evacuated again to the United States. He felt that he would catch up on the returns at a later date. (Tr. at 16, 26; Applicant's response to SOR; GE 1-3)

Applicant's wife retained a tax company (Tax Company 1) in 2018 to file their back returns. The owners of the company were convicted of defrauding the IRS out of \$3.3 million in 2021, by knowingly and fraudulently preparing and filing fraudulent client tax returns. Applicant stated that he was unaware that the company never filed his returns. (Tr. at 16, 30, 38-39; Applicant's response to SOR; AE 1, 4)

Applicant retained another tax company (Tax Company 2) in September 2020 to file his back returns and negotiate any taxes owed. He reported tax issues on a Questionnaire for National Security Positions (SF 86) that he submitted on October 22, 2020. He wrote that he had hired a tax agency (Tax Company 2) to file the returns and assist him in settling any taxes owed. He estimated that he owed \$26,400 for tax years 2024 to 2019.¹ He wrote: "federal tax documents have been returned/completed by tax preparer and awaiting submission. Enrolled in tax forgiveness program." (Tr. at 16-17; Applicant's response to SOR; GE 1; AE 1, 4)

The back returns were not filed, and Applicant was not enrolled in a tax forgiveness program. He retained a third tax company (Tax Company 3) on December 1, 2020, to file his back returns and negotiate any taxes owed. He was interviewed for his background investigation on December 2, 2020. He stated that he had previously hired a tax agency (Tax Company 2) to assist him with his taxes, but he was unhappy with their services and decided to move on to the company he had just hired. He stated that he was in a tax forgiveness program. He hoped to have all his tax issues resolved by the end of 2021. (Tr. at 30-31; Applicant's response to SOR; GE 2, 3; AE 1, 4)

¹ Any matter that was not alleged in the SOR, such as unpaid taxes, cannot be used for disqualification purposes. It may be considered in the assessment of Applicant's overall financial situation, in the application of mitigating conditions, and in the whole-person analysis.

Tax Company 3 emailed Applicant on December 2, 2020, with “tax organizer packets to fill out and send back” for tax years 2014 through 2019. Tax Company 3 emailed Applicant on October 12, 2021, asking for documents that it needed to proceed. It asked for “Tax Organizers for 2015-2017” and “tax Forms for those years [and] (1099s/W2s).” (Applicant’s response to SOR; AE 6)

Applicant responded to interrogatories in March 2022. His back tax returns had still not been filed. He stated that he forwarded his documents to Tax Company 3 for them to prepare his returns. (GE 3)

On May 25, 2022, Tax Company 3 emailed Applicant requesting information about his rental property, including purchase price, date placed in service, income from the property from 2015 to 2017, and expenses associated with the property. Applicant responded to Tax Company 3 on May 27, 2022, stating that he purchased the property in 1994 for \$70,000 and placed it in service on September 1, 2014. (Applicant’s response to SOR) He also provided the following to Tax Company 3 about his rental property:

2015-Income \$9,673; maintenance contract \$900; repair cost \$224; management fees \$1,182

2016-Income \$10,632; maintenance contract \$900; repair cost \$0; management fees \$1,182

2017-Income \$10,361; maintenance contract \$900; repair cost \$635; management fees \$1,152 (Applicant’s response to SOR)

Applicant responded to the SOR in September 2022. He wrote that “[a]ll documentation and tax organizers that are necessary to complete the tax years in question have been submitted to [Tax Company 3] for resolution.”

Applicant retained a fourth tax company (Tax Company 4) on June 16, 2023, to file his back and current returns and negotiate any taxes owed. He agreed to pay the company \$3,500, payable in seven monthly payments of \$500, starting in June 2023. Company 4 prepared and filed his 2022 federal income tax return. He owes about \$7,000 for tax year 2022. He stated that he planned to pay the 2022 taxes in September 2023. (Tr. at; 29-35; AE 7, 8, 10)

Applicant accepted responsibility for his tax problems, and he stated that he was not attempting to circumvent the tax laws, but there is no evidence that the tax returns for 2014 through 2021 have been filed. He estimates that he owes the IRS about \$25,000. He asserted that he fully intends to file the back returns and pay whatever taxes are owed. (Tr. at 16-18, 28-42)

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 did not file his 2014 through 2020 federal income tax returns when they were due. AG ¶ 19(f) is 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;

(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 the issue; 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's tax issues started in about 2013 when he was working overseas, and he was evacuated to the United States for medical issues. He returned overseas about eight months later, but after a few months, he had to be evacuated again to the United States. He felt that he would catch up on the returns at a later date.

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).

Applicant accepted responsibility for his tax problems, and he stated that he was not attempting to circumvent the tax laws. He has gone through four tax companies, but his returns have still not been filed, and he estimates that he owes the IRS about \$25,000. He asserted that he fully intends to file the back returns and pay whatever taxes are owed. However, intentions to resolve financial problems in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

There is insufficient evidence for a determination that Applicant's financial problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances. His financial issues are recent and ongoing. His failure to fulfill his duty to file his income tax returns and pay his taxes continues to raise doubts about his judgment, reliability, and willingness to follow rules and regulations. None of the above mitigating conditions are sufficient to mitigate financial considerations security concerns.

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. I also considered Applicant's honorable military service.

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
Subparagraph 1.a:	Against 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.

Edward W. Loughran
Administrative Judge