



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



In the matter of:)	
)	
)	ISCR Case No. 21-02389
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro Se*

09/11/2023

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 January 13, 2022, the Department of Defense (DOD) issued to 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; Department of Defense (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.

In Applicant's undated answer to the SOR, he requested a hearing before an administrative judge. The case was assigned to me on July 3, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 25, 2023, scheduling the hearing for August 21, 2023. I convened the hearing as scheduled. The Government

offered exhibits (GE) 1 through 4. Applicant offered Applicant Exhibits (AE) A and B. There were no objections, and all exhibits were admitted into evidence. The record was held open until September 5, 2023, to permit Applicant an opportunity to provide any documents he wanted considered. He provided documents that I have marked as AE C through F. AE D is a duplicate of AE A and AE F is a duplicate of AE B. He included with his documents a copy of the SOR and the letter from DOD advising him about his security clearance eligibility. I have included them with his documents but did not mark them as they are redundant and are already included in the record. There were no objections, and they were admitted in evidence, and the record closed. DOHA received the hearing transcript (Tr.) on August 31, 2023.

Findings of Fact

Applicant admitted the allegations in SOR. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 49 years old. He served in the military and retired honorably in the paygrade E-7. He served combat tours in 2003-2004 and 2004-2005 (12 months and 13 months). He earned an associate degree in 2019. He married for the fourth time in 2006. He has four children. He has a child from a previous relationship; adopted two stepsons, and he and his wife have a child together. His youngest son is in high school. The others are adults. Applicant started his own business in March 2021, which contracts with the federal government. Before then he was employed by federal contractors since his military retirement. (Tr. 18-24; GE 1)

Applicant completed a security clearance application (SCA) on February 8, 2021. Section 26 asked if he had failed to file or pay any federal, state, or local tax returns. He responded "no." It also asked if he had any debts that were in collection or past 120 days delinquent. He answered "no." He did not disclose any financial difficulties. He testified the omission was an oversight. (Tr. 48-51; GE 1)

Applicant was interviewed by a government investigator on February 24, 2021. He told the investigator that he had received a letter from the IRS two weeks prior that said he underpaid his taxes and owed \$5,500. He said he did not disclose this information on his SCA because he was unaware of the issue when he completed it. He said his mother-in-law did the paperwork for their tax returns, and he had hired the same accountant that works on his self-employment to look into this issue. (GE 2)

Applicant responded to government interrogatories, and he adopted the summary of his interview by a government investigator affirming it was accurate. In the interrogatories, he disclosed he had not timely filed his 2018 and 2019 federal income tax returns. He requested an extension to file his 2020 federal income tax return and it was filed timely. He testified that he filed the delinquent 2018 and 2019 federal returns in April 2021 and May 2021, respectively. He testified he had no excuse for his failure to timely file the tax returns. He was aware that he owed federal taxes for 2018, 2019, and 2020 and he did not pay them when they were due or when he filed those tax returns. He further

testified that his 2018 federal tax return was later audited, and he owed \$6,973 for taxes. He disclosed in his interrogatories that he also owed \$1,100 for 2019 and about \$1,000 for state income tax. He said he had difficulties filing his 2019 federal tax return electronically because there was an incorrect social security number. In January 2022, he received a notification by letter from the IRS advising him to pay the balance he owed of \$6,965 and to file his missing returns. It said the years required to be filed were indicated on the next page. That page was not provided by Applicant, and it is unknown what tax years the IRS was referring to. Applicant did not provide federal tax transcripts as requested in the government interrogatories and discussed during his hearing. In January 2022, he paid the IRS the amount he owed. It is unknown if he filed the missing returns mentioned by the IRS and what years were missing. (Tr. 36-38, 59-66, 77; GE 2; AE A, B)

Applicant testified that he received a letter from his state's taxation department based on the audit of his 2018 federal tax return and he owed \$1,000. He did not provide a copy of the letter. He testified that he paid his state taxes, and he does not owe any taxes to his state. He did not provide documentary proof. (Tr. 67-69; GE 2; AE A, B)

The SOR alleged three delinquent credit card debts (§§ 1.a - \$16,740; 1.b - \$14,430; and 1.c - \$3,517). Applicant attributed the delinquent credit cards to a period after he retired from the military in 2015 when he was underemployed, and his wife was unable to work due to surgery in 2015 and 2016. He also testified that he used these credit cards to maintain a lifestyle he was accustomed to both before and after he retired. In his SOR answer, he said these debts were attributable to his wife having multiple surgeries from 2018 to 2020, and her inability to work full time. He said they were struggling financially. He does not know when the cards became delinquent, but he received collection notices about the debts. He also attributed his financial problems to spending money on legal fees for his son who got into trouble. His August 2023 credit report reflects the last payment on the credit cards in SOR §§ 1.a and 1.b were in April 2018 and January 2018, respectively. He testified that he decided at the time to pay other bills and not pay the credit cards. His wife did not work from 2006 to 2019. She attended school for about nine years, earning a bachelor's degree in 2015 and a master's degree in 2019. (Tr. 29-33, 39-44, 47, GE 2, 3, 4)

Applicant stated in his SOR answer regarding the two debts alleged in §§ 1.a and 1.b (owed to the same creditor) that he was working on a payment plan to resolve them. He testified that in about 2019 or 2020 the creditor agreed to settle the debt for a lump sum payment, but he was unable to pay the amount. He took no further action until he contacted the creditor about two weeks before his hearing, and it would not negotiate a payment plan. He explained he had saved some money but then needed to help his son with his legal issues. At his hearing, he explained he will resolve the debts in SOR §§ 1.a and 1.b after he completes the refinancing of his house. He said it took him seven months to find a mortgage company that would refinance his house due to his credit history. He anticipated the refinancing to be completed sometime in September 2023. Post-hearing, he stated that he was refinancing his house and then would pay the debts. (Tr. 32-33, 39-44, 47-48, 57-59; AE C)

Regarding the debt in SOR ¶ 1.c, Applicant said in his SOR answer that he had a payment plan to pay it off. He testified that he thought he had paid this credit card but learned that he had two accounts with the creditor, and he paid the other one. When he was interviewed by a government investigator in February 2021, he explained that this credit card was used to pay for a cruise he and his family took in 2016 as a Christmas present. He and his wife also took a separate cruise in 2016 to celebrate their 10th anniversary. His family took a cruise in 2019 that was paid for by other relatives. He and his wife took a vacation in 2020 to celebrate her birthday. In his post-hearing response, he said the debt in SOR ¶ 1.e is no longer on his credit report. He testified when he checked his credit report this debt was not listed. He said he contacted the creditor and was told “no debt.” The debt is reported on his February 2021 and August 2023 credit report. (Tr. 33-36 72-75; GE 2, 3, 4; AE C)

Applicant testified that his annual income is approximately \$80,000. He has received approximately \$1,700 a month from VA disability (\$20,400 annually) since 2015. He also receives military retirement pay of \$21,600 annually. His wife’s current annual income is \$55,000, which she has earned for the past year. Her monthly VA disability is \$1,000 (approximately \$12,000 annual since 2007). In 2019, she earned about \$26,000. He estimated he has about \$5,000 to \$6,000 in his bank accounts and a small amount in a pension account. (Tr. 26-29, 53-54, 76)

Applicant has not had financial counseling. He said he is current on all of his financial obligations. He does not have a budget. (Tr. 71-72)

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

Policies

When evaluating an applicant’s national security eligibility, the administrative judge must consider the 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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 taxes as required.

Applicant failed to timely pay his federal income taxes for tax years 2018, 2019, and 2020. He also owed state income taxes that he failed to timely pay. He has three delinquent credit card debts. He admitted living beyond his means and used one of the credit cards to finance a cruise for his family in 2016. There is sufficient evidence to support the application of the above disqualifying conditions.

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 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;

(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 failed to pay his federal income taxes until after he received the SOR. He received a notification from the IRS in January 2022, that directed him to pay his delinquent federal taxes and to file his missing tax returns. He paid the amount due on January 22, 2022. He did not provide proof that his delinquent state taxes were paid, but I believe his testimony that he resolved those too, albeit late. Although not alleged in the SOR, Applicant did not file his 2018 and 2019 federal income tax returns until after he was interviewed by a government investigator. He did not pay his taxes for those tax years until after he was notified by the IRS and after his security clearance investigation began. He was aware of the security concern when he completed his February 2021 interrogatories. Based on Applicant's failure to provide tax transcripts and the second page of the letter from the IRS telling him what tax years were not yet filed, I have serious questions about their status. AG ¶ 20(g) applies to Applicant's delinquent tax payments.

Applicant has three delinquent credit card debts totaling about \$34,687 that remain unpaid. He attributed his financial problems to a period in 2015 and 2016 when his wife had surgery, he was transitioning from the military, and later, his son's legal issues. He said in his SOR answer that his financial problems were due to his wife's surgeries in 2018 to 2020. These were conditions beyond his control. For the full application of AG ¶ 20(b), he must have acted responsibly under the circumstances. He has not resolved the debts that have been delinquent for at least five years. He used a credit card to finance his family's vacation in 2016 and did not pay it. He hopes to resolve them when he refinances his house. AG ¶ 20(b) has some application.

Applicant has not had financial counseling, and there are not clear indications his financial problems are under control. He said he attempted to resolve the credit card debts several years ago but did not because he did not have the lump sum to pay them. Based on Applicant's spending and lifestyle I did not find him credible that he has made reasonable efforts to resolve his debts. They remain unresolved. He is planning on paying his delinquent credit card debts after he refinances his house. Intentions to pay debts 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). Applicant's debts remain unpaid, and he has not exercised good judgment in addressing them. AG ¶¶ 20(a), 20(c), and 20(d) do not apply.

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.

I considered Applicant's military service and participation in combat operations. He was aware his finances were a security concern, but he failed to make them a priority. Despite some minimal mitigation, he does not have a reliable financial track record that would enable me to trust that he will pay his debts or manage his financial affairs responsibly in the future. He did not address his tax issues until they came up during his security clearance process.

The DOHA Appeal Board has held that:

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).¹

The record evidence leaves me with 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.

¹ ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).

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-1.c:	Against Applicant
Subparagraph 1.d-1.e:	For 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