



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



In the matter of:)	
)	
)	ISCR Case No. 22-00747
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

09/26/2023

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On September 2, 2022, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective June 8, 2017 (AG).

Applicant answered the SOR with an undated response, including attachments. He requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 18, 2023, and the hearing was convened as scheduled on June 21, 2023. The Government offered exhibits (GE) 1-3,

which were admitted into evidence without objection. Its exhibit list and disclosure letter were marked as hearing exhibits (HE) I-II. Applicant testified and offered Applicant exhibits (AE) A-C, which were admitted into evidence without objection. The record remained open and Applicant submitted AE D-E, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on July 3, 2023.

Findings of Fact

Applicant denied all of the allegations with explanations. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 40 years old. He has worked for a federal contractor since December 2019, as an engineer. From February 2019 to July 2019, he was unemployed. From 2016 to February 2019, he worked for a different federal contractor. He holds two bachelor's degrees in engineering. As of the hearing date, he was single, never married, with no children. (Tr. 5, 23-24, 34; GE 1)

The SOR alleged Applicant failed to timely file his 2015 to 2021 federal and his 2015-2016 and 2018-2021 state income tax returns, as required. (SOR ¶¶ 1.a-1.b)

Applicant's understanding of his federal and state income tax requirements were that if he had a "credit" (meaning he was due a refund from his previous year's tax withholdings overpayment), he was not required to file a tax return. He also claimed he filed extensions with the IRS to file his returns six months after the normal filing deadline (typically April 15, with the exception of the COVID years of 2020 and 2021). He also claims he was unable to file his 2016 federal return because, "my 2016 federal taxes were actually flagged for potential identity theft." He did not support this assertion with documentation. He also claimed that assistance from the IRS during 2020 was difficult because of the pandemic. He further stated that he always planned to file his tax returns, but his life just got busy and he did not get around to doing it in a more timely fashion. He documented that he does not owe the IRS or his state for any tax debt. (Tr. 35-39, 41-43, 49-50; SOR Answer; GE 2 (p. 6-bottom center pagination); AE B, E)

Applicant was aware as early as 2019, when he completed his security clearance application (SCA), that there was a problem with his 2016 taxes. During his background interview in January 2020, he committed to filing his 2016 federal return "within the next month." He did not file that return until December 2021. He attributed this delay to the IRS being unresponsive during the pandemic. He admitted that he has not sought professional tax assistance since approximately 2015. He did not consult with a tax attorney or CPA about his tax return filings. (Tr. 43, 57; GE 1 (p. 45); GE 2 (p. 10).

Applicant's federal and state tax transcripts for tax years 2015-2021, show the following:

Tax Year	Date Federal Return filed	Date State Return filed
2015	April 2018 (untimely)	April 2018 (untimely)
2016	December 2021 (untimely)	April 2018 (untimely)
2017	April 2018 (timely)	Not alleged in SOR
2018	August 2022 (untimely)	August 2022 (untimely)
2019	August 2022 (untimely)	August 2022 (untimely)
2020	August 2022 (untimely)	August 2022 (untimely)
2021	Not filed as of June 2023	June 22, 2023 (untimely)

Applicant also admitted that he had not filed his 2021 federal return in his June 20, 2023 email to me (AE A). He filed his 2021 state return after his hearing. (AE 2 (pp. 15-35); AE A-B, D)

Applicant produced two character letters from a former coworker and a friend of 26 years. The coworker opined that Applicant is a professional and trustworthy person. He believes Applicant is “respectful of privacy, classified information, rules and restrictions.” His friend, who is an employee of defense contractor, also vouches for Applicant’s trustworthiness. Neither indicated that they were aware of his tax return filing issues. (AE C)

Policies

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 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(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.

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.

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 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially applies:

(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 2015-2016 and 2018-2021 federal and state income tax returns. I find that he timely filed his 2017 federal tax return. I further find the above disqualifying condition is raised with the remaining alleged years.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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; 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 misunderstanding of his income tax filing requirements is obvious from his testimony and documentary explanations. He has two bachelor's degree in engineering and is an intelligent person. Despite his knowledge that there were problems with him not filing tax returns as early as 2019 and 2020. He failed to take responsible action to address his tax-filing issues, or learn what his tax-filing responsibilities were. He never consulted a tax attorney or CPA on the matter. He claims he contacted the IRS during the pandemic, but received very little assistance from them. This is likely the case from early 2020 through mid-2021, but his tax-filing issues both precede and succeed that time frame. The evidence does not support that he has taken responsible actions to timely file his federal tax and state tax returns. AG ¶ 20(b) does not apply. He receives some credit for finally filing his federal and state tax returns, however, that credit is minimized by his extended delay in filing those returns. AG ¶ 20(g) has some application.

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 guideline 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 considered Applicant's character evidence, but I also considered his untimely filing of his 2015-2016 and 2018-2021 federal and state income tax returns. Applicant has not established a track record of financial responsibility in dealing with his tax issues.

Overall, 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.

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 [Except for tax year 2017]
Subparagraph 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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge