



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



In the matter of:)
)
) ISCR Case No. 21-02337
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell., Department Counsel
For Applicant: *Pro se*

09/26/2023

Decision

GARCIA, Candace Le’i, Administrative Judge:

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

Statement of the Case

On April 21, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on May 4, 2022 (Answer), and he requested a hearing before an administrative judge. The case was assigned to me on March 9, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice on March 24, 2023, scheduling the matter for a video teleconference (VTC) hearing on April 18, 2023. I convened the hearing as scheduled.

At the hearing, I admitted Government Exhibits (GE) 1 through 5, without objection. Over Applicant’s objections, I admitted GE 6 and GE 7. Applicant testified, and he did not

submit any documentation or call any witnesses. At Applicant's request, I kept the record open until May 9, 2023, for him to submit documentation. He timely submitted documentation that I marked as Applicant Exhibits (AE) AE A through G and admitted in evidence without objection. DOHA received the hearing transcript on May 1, 2023.

Findings of Fact

Applicant denied all the SOR allegations. He is 41 years old. As of the date of the hearing, he was engaged to be married, and he has three children, ages 23, 7, and 3. He graduated from high school in 2000 and earned an associate degree in 2006. He also has received several certifications in information technology. He and his fiancée have resided together in a rental property since January 2023. (Tr. at 4-5, 7, 9, 12, 28, 45-47, 55-56, 74; GE 1-3, 7; AE B, F)

Applicant served in the U.S. military from August 2000 to January 2005, and he deployed to Iraq in 2003. He received a general discharge under honorable conditions after he was administratively discharged for misconduct. Since approximately 2006, he has worked, at times, for various DOD contractors, to include periods in which he worked overseas from April 2010 to April 2012 and March 2013 to October 2016. In April 2012, the DOD contractor for whom he had worked overseas since April 2010, issued him a written reprimand for submitting erroneous time sheets, and terminated him for violating the company's information technology policy by having unauthorized music on his computer. In October 2016, another DOD contractor for whom he had worked overseas since August 2015, terminated him due to his inability to obtain a security clearance. He subsequently continued to live overseas until December 2018, when he returned to the United States. (Tr. at 10-11, 29-47; GE 1-3, 7; AE A, B, F)

Applicant was unemployed from October 2007 to February 2008, April 2012 to March 2013, October 2016 to February 2019, and January 2023 to April 2023. He worked only part time, as a delivery driver, from February 2019 to August 2019. Since then, he has worked full time for various employers, and he was hired by his current employer in April 2023. He and his sister also started their own business in April 2023, but they had not yet generated income as of the date of the hearing. He was first granted a security clearance in 2000, when he served in the U.S. military, and that clearance was revoked in September 2016 when a DOHA administrative judge found that he had failed to mitigate personal conduct security concerns. (Tr. at 5, 10-11, 29-47; GE 1-3, 5-7, 57-59, 74-76; AE A, B, F)

The SOR alleged that Applicant had four delinquent consumer debts totaling \$28,601. (SOR ¶¶ 1.a-1.d) It also alleged that he failed to timely file his federal income tax returns, as required, for tax years (TY) 2012 through 2018, and that his federal income tax returns for TY 2015 through 2018 remained unfiled. (SOR ¶¶ 1.e-1.f) It also alleged that he failed to timely file his state income tax returns, as required, for tax years 2015 through 2020. (SOR ¶ 1.g) The SOR allegations are established by Applicant's October 2017 and May 2020 SCAs; his undated response to DOHA interrogatories, in which he provided IRS tax account transcripts from January 2022; and credit bureau reports from August 2021 and July 2022. (Answer; GE 1-5)

Applicant attributed his failure to file his federal and state income tax returns and his delinquent debts primarily to his uncertainty about how to file his income tax returns when he worked overseas. He had difficulty finding a tax professional who knew how to file income tax returns on income that he earned overseas. His period of unemployment and underemployment, after his security clearance was revoked in 2016, as well as, in part, due to the COVID-19 pandemic, were also contributing factors. He also has paid approximately \$3,000 in legal expenses since 2020 in a custody battle with the mother of his three-year-old child. He obtained the loans and credit card in SOR ¶¶ 1.a through 1.d, as further discussed below, for living expenses, to include financially supporting his three children. As of the date of the hearing, he was also preparing financially to become a grandfather, as his 23-year-old was expecting a child. (Tr. at 7-9, 28, 29-86; GE 1-3, 7; AE B, D, E, G)

Applicant hired and worked with a credit education service from approximately May 2011 to 2015 to help improve his credit. In approximately 2022, he disputed the debts in SOR ¶¶ 1.a through 1.d to determine their validity. He began working with another credit education service, in approximately February 2023, to repair and improve his credit. He also completed a financial seminar offered by his church in approximately February 2023, and he enrolled in another financial class to continue learning about how to manage his finances. (Tr. at 7-9, 48-54, 62-70, 79-86; GE 1-3; AE B, D, E, G)

From approximately 2014 to 2016, Applicant retained and worked with a tax professional “for expats,” to file: his “2010 Form 1040 Income <\$100,000” for TY 2010 through 2013; his outstanding federal income tax returns for TY 2014 and 2015; and his state income tax returns for TY 2010 through 2014. In 2021, he attempted to work with his mother’s accountant to file his income tax returns, but that individual was unfamiliar with filing income tax returns for income earned overseas. In May 2023, he retained another tax professional “for expats” to file his federal income tax returns for TY 2017, 2020, 2021, and 2022. He did not believe he was required to file his federal or state income tax returns when he was unemployed from 2016 to 2018, and he did not believe he was required to file his state income tax return for TY 2015, when he resided and worked overseas. He did not provide any documentation concerning the status of his state income tax returns for TY 2019 and 2020, when he lived and worked in the United States. (Tr. at 7-9, 48-54, 62-70, 79-86; GE 1-3; AE B, D, E, G)

January 2022 IRS tax account transcripts reflect that Applicant did not file his federal income tax returns for tax year (TY) 2012, 2013, 2014, and 2019 until April 2015, October 2015, December 2015, and May 2020, respectively. The transcripts also reflect that he owes \$18,780 and \$1,285 in federal taxes for TY 2012 and 2013, respectively. He established an installment agreement with the IRS in March 2016, but that agreement was no longer in effect as of September 2016, and the balances due on his account were not collectible as of October 2021 “not due to hardship.” The transcripts also reflect that he had not yet filed his federal income tax returns for TY 2015, 2016, 2017, 2018, 2020, and 2021, and the IRS issued him refunds, in part due to tax relief credits, for TY 2020 and 2021 totaling approximately \$2,300 and \$6,200, respectively. (GE 2)

SOR ¶¶ 1.a and 1.d are for charged-off loans with the same creditor in the amounts of \$16,566 and \$557, respectively. SOR ¶¶ 1.b and 1.c are charged-off loans with another creditor in the amounts of \$10,014 and \$1,464, respectively. As previously stated, Applicant stated that he disputed these debts in approximately 2022 to determine their validity. As of the date of the hearing, he planned to contact these creditors, with the help of the credit education service, to negotiate payment plans and resolve these debts. (Tr. at 52-54, 59, 61-67, 76-81; GE 2, 4, 5)

Applicant's annual income as of the date of the hearing was approximately \$90,000. Coupled with his other revenue sources, he anticipated a total annual income of \$110,000, an increase from his annual income of approximately \$60,000 to \$90,000 since August 2019. He had just obtained a 10 percent disability rating from the U.S. Department of Veterans Affairs (VA), which he expected to increase based on additional paperwork he had recently submitted to the VA. He intends to hire a tax professional to assist him with filing required tax returns for his business. He learned about the importance of making a budget. He and his fiancée split their monthly rent of \$1,000. After paying his monthly living expenses of approximately \$1,700, he anticipated that his monthly net remainder would be approximately \$2,000 to \$3,000. He intends to resolve his financial issues so that he can purchase a home. (Tr. at 29-63, 74-76, 87-88)

Numerous character references, to include a former supervisor, former coworkers, close friends, and fellow church members, attested to Applicant's trustworthiness, reliability, and judgment. (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 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(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."

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 Exec. Or. 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* Exec. Or. 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 has a history of not being able to pay his debts. AG ¶¶ 19(a) and 19(c) are established for SOR ¶¶ 1.a-1.d. Although he filed his federal income tax returns for TY 2012 through 2014, he failed to timely do so, as required. He also failed to show that he filed his federal income tax return for TY 2015. For TY 2016, he was employed

overseas until October 2016, so he should have filed at least his federal income tax return for that tax year, yet he failed to show that he has done so. Given his periods of unemployment, he likely was not required to file his federal or state income tax returns for TY 2017 and 2018. Since he worked overseas during TY 2015 and 2016, he likely was not required to file his state income tax returns for those tax years either. However, he failed to show that he filed his state income tax returns for TY 2019 and 2020. The evidence is sufficient to raise AG ¶¶ 19(c), and 19(f) for SOR ¶ 1.e, for TY 2015 and 2016 but not for TY 2017 and 2018 in SOR ¶ 1.f, and for TY 2019 and 2020 but not for TY 2015, 2016, 2017, and 2018 in SOR ¶ 1.g.

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; 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.

Circumstances beyond Applicant's control contributed to his financial problems. Nonetheless, under AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. Although untimely, he filed his federal income tax returns for TY 2012, 2013, 2014 in April 2015, October 2015, and December 2015, respectively, before he received the SOR. I therefore find SOR ¶ 1.e in Applicant's favor.

As stated above, Applicant failed to show that he filed his federal income tax returns for TY 2015 and 2016. He also failed to show that he filed his state income tax returns for TY 2019 and 2020. Although he planned to contact his creditors in SOR ¶¶ 1.a through 1.d to negotiate payment plans and resolve these debts, with the help of the credit education service he began working with in February 2023, he failed to provide documentation to corroborate his efforts. While he has received financial counseling and

he now has the means to continue resolving his delinquent debts, he needs more time to establish a track record of doing so. I find that these financial issues continue to cast doubt on his reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(c), 20(d), and 20(g) do not apply to SOR ¶¶ 1.a through 1.d, to TY 2015 and 2016 in SOR ¶ 1.f, and to TY 2019 and 2020 in SOR ¶ 1.g.

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 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. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant has not mitigated 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.d:	Against Applicant
Subparagraphs 1.e:	For Applicant
Subparagraph 1.f:	For Applicant for tax years 2017 and 2018, and Against Applicant for tax years 2015 and 2016
Subparagraph 1.g:	For Applicant for tax years 2015, 2016, 2017, and 2018, and Against Applicant for tax years 2019 and 2020

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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge