



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



In the matter of:)	
)	
)	ISCR Case No. 21-01728
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: Christopher Snowden, Esq.

10/10/2023

Decision

MURPHY, Braden M., Administrative Judge:

Applicant filed several years of state and federal income tax returns late, and owed past-due federal taxes, mostly after retiring from the Army. Though he did so belatedly, he sought appropriate professional advice and his tax issues are largely resolved. The tax returns alleged in the SOR have been filed, his taxes are paid, and his tax issues are under control. In consideration of that evidence as well as his long military career, Applicant has provided sufficient evidence to mitigate the financial considerations security concerns. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 4, 2021. On October 5, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The CAF issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on October 25, 2021, with two attachments. (SOR Ex. 1 and 2). He initially waived his right to a hearing. On December 22, 2021, his counsel entered an appearance and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on April 18, 2023. On May 10, 2023, DOHA issued a notice scheduling a video-teleconference hearing for June 20, 2023.

The hearing convened as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 through 4. Applicant testified and submitted Applicant's Exhibits (AE) A through N. All of the exhibits were admitted without objection. I held the record open until July 21, 2023, to allow Applicant the opportunity to submit additional documentation.

Applicant timely submitted additional documents, which were marked and admitted as AE O through AE X without objection. The July 24, 2023 e-mails from both counsel providing commentary about the post-hearing submissions are marked together as Hearing Exhibit (HE) IV. (HE I, II, and III are exhibit lists) DOHA received the hearing transcript (Tr.) on June 30, 2023. The record closed on July 24, 2023.

Findings of Fact

Applicant admitted the three SOR allegations, all with explanations. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and the record evidence, I make the following additional findings of fact.

Applicant is 46 years old. He has several years of college, but no degree. He joined the Army at age 17, and served from 1994 to 2016, retiring as a sergeant first class. He has held a clearance since joining the Army. (GE 1)

Applicant's Army service included several deployments to Afghanistan and Iraq, among other overseas assignments. He was awarded numerous decorations and medals, including a Bronze Star, four Army Commendation Medals, four Army Achievement Medals, multiple unit awards including a Presidential Unit Citation, seven Good Conduct medals, an Afghanistan Campaign Medal (two campaign stars), an Iraq Campaign Medal (five campaign stars), along with numerous service awards and badges. (AE D; Tr. 58-59)

After retiring from the Army, Applicant worked as a forklift driver for six months in early 2017. He was then briefly unemployed before spending about two years with his next employer, from 2017 to 2019. He then worked for a federal contractor from March 2019 to March 2020, and he has worked for his current employer and clearance

sponsor since March 2020. He lives in State 1, but works in a neighboring state, State 2. (GE 1; AE K; Tr. 8, 19-22, 27-30, 58)

Applicant was previously married from 2005 to 2016. The marriage produced two daughters, ages 21 and 13. He has a 12-year-old daughter from another relationship. He remarried in 2016. He is stepfather to his wife's three grown children. Two of his children live with him. His wife owns a beauty salon and works for a major airline. (GE 1; Tr. 18-19, 69-70)

The SOR alleges Applicant's failure to file federal income tax returns for tax years (TY) 2012 and 2016 to 2019. (SOR ¶ 1.a) It also alleges his failure to file state income tax returns for TY 2016 to 2019. (SOR ¶ 1.b) It also alleges that he owes past-due federal taxes of about \$8,370 for TY 2020. (SOR ¶ 1.c).

On his security clearance application (SCA), Applicant disclosed several years of unfiled federal income tax returns. He asserted that he "didn't have the necessary paperwork." He noted that he had retained a financial manager. He disclosed other debts, most notably \$29,000 in past-due child support, and addressed how they were being resolved. (GE 1 at 46-50) He discussed his tax issues further in an April 2021 background interview. (GE 2 at 10-11)

In a September 2021 interrogatory response about his taxes and debts, Applicant provided federal income tax transcripts from the IRS, details about his state income tax returns, along with general information about his financial status. This information, and his prior disclosures on the SCA, largely establish the SOR allegations. (GE 1, GE 2 at 16, 18, 20, 24-27)

Applicant was deployed to a combat zone in Afghanistan from November 2012 to the fall of 2013. His typical practice when deployed was to file his income tax returns when he returned from deployment, but he failed to do so for TY 2012. (SOR ¶ 1.a, in part) His return from this deployment was particularly difficult, as several of the soldiers in his unit had been killed in combat and others committed suicide after returning home. Applicant said he was focused on his own well-being and that of his soldiers. He said filing his income tax return "just slipped my mind." (Answer; Tr. 24-26, 38-39, 42) He realized that his TY 2012 income tax return was unfiled while responding to the interrogatories. He filed the federal income tax return for TY 2012 in December 2021. It reflects that he owed \$562 (not including penalties and interest), which he subsequently paid. (AE F, AE H, Tr. 26, 45-47, 65-66)

Applicant also failed to file his federal and state income tax returns, where applicable, for TY 2016 to 2019. (SOR ¶¶ 1.b, 1.c) In 2017, when his TY 2016 federal income tax return was due, he was adjusting to civilian life after retiring from the Army. He was also pursuing suitable civilian employment, and he had many out-of-state VA doctor visits that year. This was complicated by the fact that his disability assessment by the U.S. Department of Veterans Affairs (VA) was not completed until 2018. (Answer; Tr. 28-29, 43-45, 66, 81) In 2017, he was also making a limited income of about \$700

every two weeks, which was several thousand dollars less than he had earned in the Army. He could not afford to pay the taxes he owed, and he chose to prioritize providing for his family. (Tr. 30-32, 80) In 2018, his income improved as he worked as an aviation inspector, earning about \$57,500. In 2019, he began working for a government contractor and earned almost \$78,000. (Tr. 32-33) He asserted, however, that he still prioritized providing for his family and catching up on unpaid bills rather than focusing on his tax issues. (Tr. 43-44)

Beginning in May 2020, Applicant consulted a financial counselor at his place of employment, for assistance in rebuilding his credit, repaying his creditors, and sorting out his unfiled tax returns. He was advised to pay delinquent household debts and get them in order before addressing his tax situation. He said he was also advised during his background interview to resolve his delinquent debts as soon as possible, which he did. (Answer; GE 3, GE 4, AE L; Tr. 33-35, 40-42, 67-69, 72-74, 78-80)

Applicant also retained a tax preparer to help address his late-filed returns. The tax preparer filed his federal income tax returns for TY 2016 to 2019 in November 2021. He filed his various state income tax returns in July 2021, with one earlier exception. All returns for subsequent tax years have been prepared by the tax preparation firm. (Tr. 36, 45; AE G, AE H, AE O)

For TY 2016, Applicant owed \$1,437 in federal taxes, which he subsequently paid. (AE G, part i, AE H) From TY 2012 through TY 2016, Applicant was on active duty and his "home of record" was in State 3, where he did not have to pay state income taxes or file a state income tax return, even though he was stationed elsewhere. He reported this in his interrogatory response, where he wrote "N/A" in reporting the state income tax return filing status for those tax years. He also confirmed that information in his testimony. (GE 2 at 18; Tr. 54, 60-61) This evidence is sufficient to rebut the allegation of an unfiled state income tax return for TY 2016. (SOR ¶ 1.b, in part).

For TY 2017, Applicant owed \$440 in federal taxes, which he subsequently paid. (AE G, part ii, AE U) His TY 2017 State 1 income tax return reflects that he owed \$826 (not including penalties and interest), which he subsequently paid. (AE G, part ii, AE O, part i, AE V)

For TY 2018, Applicant owed \$4,666 in federal taxes, which he subsequently paid. (AE G, part iii, AE P, AE T) His TY 2018 State 1 income tax return, filed in May 2022, reflects that he owed \$2,639 (not including penalties and interest). (AE G, part iii, AE O, part ii) He documented a payment of \$1,065. (AE H, AE P; Tr. 46-50, 55-56)

For TY 2019, he owed \$189 in federal taxes, which he subsequently paid. (AE G, part iv, AE H, AE S) He said he did not pay penalties and interest for any of these past-due income taxes and was not aware if he had to do so. He paid what he thought he owed. (Tr. 46-50)

Since early 2019, Applicant has been employed with contractors headquartered in State 2. When he began working there, he would work in State 2 during the week, and go home to State 1 on weekends. The COVID pandemic began shortly after he started working for with his current employer, in March 2020, so since then he often works from home (in State 1) or travels for work to remote sites. (Tr. 62-65) As a result of his work in State 2, he has also been required to file a state income tax return there.

For TY 2019, Applicant's State 1 and State 2 income tax returns were prepared and filed by his tax preparer in July 2023. He received a \$170 refund (not including penalties and interest) from State 2, and he owed \$945 to State 1, which he subsequently paid. (AE H, AE O, part iii; AE W; Tr. 56-57)

Tax filings for later tax years are not alleged in the SOR. Applicant filed his TY 2020 federal income tax return on or about August 16, 2021. (GE 2 at 30) He owed \$8,370 in federal taxes for TY 2020. (SOR ¶ 1,c),but he paid the debt in full. (GE 2 at 17, 30, 38; SOR Ex. 2; AE M, AE N) He made some payments before the SOR was issued. (SOR Ex. 2; Tr. 37-38, 50-51) After over \$8,000 in payments in October 2021, and calculation of about \$100 in penalties and interest, he received a \$31 refund in August 2022. (AE X)

Applicant provided a TY 2020 income tax return for State 1. It is dated July 21, 2023, but it is unsigned and incomplete. No federal income, from which state income is calculated, is reflected. (Tr. 37, 57-58; AE O, part iv) No State 2 income tax return for TY 2020 was provided.

Applicant said he filed his TY 2021 federal income tax return in September 2022 by mail. He estimated that he owed about \$3,400, to be withdrawn from his bank account. He said the return was not accepted due to a dispute with his ex-wife over who can claim their eldest daughter as a dependent. This dispute is ongoing. He said he may have to pay an additional \$1,200 or so and is able and willing to do so. (Tr. 51-54, 70, 77) Applicant's TY 2021 State 2 income tax return was prepared by the tax service in May 2022. It reflects a \$1,966 refund. (AE O, part v; Tr. 37, 57-58)

Applicant has filed his TY 2022 federal income tax return. He said he owed \$1,300 at the time of the hearing. After the hearing, he documented a tax payment of \$1,700 in July 2023. (Tr. 51-54, 77-78; AE Q)

As to his current budget, Applicant pays \$658 in monthly child support for his 13-year-old daughter. It is taken out of his retirement pay. His child support requirement decreased by half when his older daughter graduated. He receives about \$2,100 a month in retirement pay, and about \$4,177 in monthly VA disability compensation. He earns an estimated \$118,000 annual salary. He keeps an informal family budget, and he has a monthly surplus of about \$3,500 to \$4,000. He has a 401k pension plan and contributes to it. (Tr. 71-75, 81; GE 2 at 15; AE R) His current credit reports show financial stability and no significant delinquencies. (AE A, AE B, AE C)

Applicant has earned exceptional ratings at work and has participated in appropriate professional training. (AE E, AE J) His character references provided strong endorsements of his professionalism, judgment, trustworthiness, reliability, and eligibility for a clearance. (AE I)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant’s eligibility 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. Likewise, I have not drawn 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. 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 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.

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. . . . 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 sets forth 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 failed to timely file his federal income tax return for TY 2012 after returning from a difficult combat deployment, and also his state and federal income tax returns for TY 2016 to 2019 after retiring from the Army. AG ¶¶ 19(f) applies. Applicant did not have to file a state income tax return for TY 2016.

Applicant paid his TY 2020 federal tax debt of \$8,300 by October 2021, about when he received the SOR). For the tax debt at SOR ¶ 1.c, AG ¶¶ 19(c) and 19(f) apply, but he quickly resolved the debt.

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. *See, e.g.,* ISCR Case No, 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed towards inducing an applicant to file tax returns. Rather, it is a proceeding aimed at

evaluating an applicant's judgment and reliability. *Id.* A person 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. Aug. 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. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis added); ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015).

Conditions that could mitigate 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.

Applicant's failure to timely file his TY 2012 federal income tax return was due to the unusual circumstance of a combat deployment and its difficult aftermath. He did not realize the return was unfiled for several years but addressed the matter responsibly when he learned of it. AG ¶ 20(a) applies to that return. It also applies to any tax debt he owed, since Applicant paid his outstanding taxes in good faith and has ample resources with which to address future obligations.

Applicant experienced decreased income and employment instability in 2017 after he retired from the Army. He also was travelling out-of-state to the VA for medical treatment. These circumstances contributed to his failure to file state and federal income tax returns in his early years after the Army. AG ¶ 20(b) therefore has some application. This impact was lessened, however, during subsequent years, when he was earning increased income and his VA disability compensation was clarified, yet he failed to address his tax filings more promptly. He therefore does not get full credit under AG ¶¶ 20(b) or 20(d) for good-faith, responsible efforts under the circumstances.

However, Applicant is credited with addressing his debts and tax issues by consulting a reputable financial counselor beginning in May 2020 and following their advice. He paid his debts and began to address his taxes with the assistance of a tax preparer that he continues to use. He filed several years of unfiled income tax returns, albeit late, and paid what he owed. While the status of his taxes for TY 2021 is being disputed, his debts and tax issues are being resolved and are under control. AG ¶ 20(c) therefore applies, as does AG ¶ 20(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 under all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. I considered Applicant's financial hardships, his long, honorable, and decorated service in the Army, often in difficult circumstances, his excellent work record, and his efforts to resolve his tax issues. I also found his explanations and testimony credible. After seeking appropriate professional financial and tax advice, he paid his debts and filed the late state and federal income tax returns at issue. While his taxes for TY 2021 remain disputed, he continues to use professional services to address his taxes. This lessens the likelihood of continued tax issues in the future. Overall, the record evidence leaves me with no questions or doubts as to Applicant's

eligibility for access to classified information. Applicant provided sufficient evidence to mitigate financial 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:	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant

Conclusion

Under all of the circumstances presented by the record, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Braden M. Murphy
Administrative Judge