



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



In the matter of:)	
)	
)	ISCR Case No. 22-02411
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

11/13/2023

Decision

Curry, Marc E., Administrative Judge:

Applicant has been making payments toward the satisfaction of his delinquent federal income taxes for the past 18 months through a payment plan that he arranged with the help of a tax preparer. Although he has not yet begun satisfying the delinquent state income tax debt, I am confident that given the steady progress that he has made in paying the federal delinquency that he will begin making the state income tax payments once the federal debt is satisfied. Under these circumstances, I conclude Applicant has mitigated the financial considerations security concerns. His application for a security clearance is granted.

Statement of the Case

On December 22, 2022, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DCSA CAS took the action 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

National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On February 4, 2023, Applicant answered the SOR. He admitted both allegations and requested a decision based on the evidence in the file rather than a hearing. On February 7, 2023, Department Counsel prepared a File of Relevant Material (FORM), setting forth the Government's arguments against Applicant's security clearance-worthiness. The FORM contains four attachments, identified as Item 1 through Item 4.

Applicant received a copy of the FORM on February 13, 2023. He was given 30 days to file a response. He filed a response on March 22, 2023, whereupon the case was assigned to me on April 28, 2023. On October 3, 2023, I re-opened the record *sua sponte* to allow Applicant to supplement the record. Within the time allotted, he did so, submitting one document that I marked and incorporated into the record as Item 5.

Findings of Fact

Applicant is a 53-year-old married man with two adult children and two adult stepchildren. He has a high school education. Since April 2021, he has been working for a defense contractor as an electrical foreman. (Item 2 at 12)

The SOR alleges that Applicant owes approximately \$29,753 in delinquent federal income taxes for tax years 2013, 2014, 2017, and 2018, and that he owes approximately \$885 in delinquent state income taxes for tax years 2017, 2018, and 2019. (Item 1) Applicant did not incur these debts as a result of an inability to afford his tax debts, or due to procrastination. Rather, he was unaware that he owed these debts until an audit revealed the shortfall in July 2021. (Item 3 at 2) He attributed the debt to tax software that he used to assist with filing his tax returns that miscalculated what he owed. (Item 3 at 7) Subsequently, Applicant hired an accountant to help negotiate a payment plan. (Item 4 at 2) Under the plan, Applicant has been making \$600 monthly payments since November 2021. (Item 5) As a result, he has reduced the delinquency by \$12,800. Although he stated that he is on a payment plan to satisfy his state income tax delinquency, he provided no supporting evidence.

Moving forward, Applicant will continue to utilize an accountant to help him file his income tax returns. Applicant has no issues with financial hardship, as he earns \$67 per hour, nearly triple what he earned in his previous job. (Item 3 at 3)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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 ¶ 1(d) 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline F: Financial Considerations

Under this concern, "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." (AG ¶ 18)

Applicant's history of income tax delinquencies triggers the application of AG ¶ 19(c), "a history of not meeting financial obligations," and AG ¶ 19(f), ". . . failure to pay annual Federal state, or local income tax as required." Applicant did not pay his tax debts in their entirety because of an inability to do so, or due to procrastination. Instead, because of problems that he experienced using tax filing software, he did not know that he had been underpaying for several years until an audit revealed the underpayments in July 2021. Shortly after the audit, he retained an accountant who helped him diagnose the problem and who arranged a payment plan. Beginning one year before the issuance of the SOR, and continuing through the present, Applicant has reduced the income tax debt by approximately \$12,800. Under these circumstances, the following mitigating conditions apply under AG ¶ 20:

(b) the conditions that resulted in the financial problems were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

(c) 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 did not produce evidence that he has satisfied the state tax debt delinquency. However, given that progress he has made in reducing the federal income tax delinquency, and the nominal amount of the state income tax debt remaining, I conclude that Applicant's contention that he is paying state income tax debt through a payment plan is credible. In conclusion, Applicant has mitigated the financial considerations security concerns.

Whole-Person Concept

The good-faith nature of the mistake that caused Applicant to underpay his tax debts for the years in question, together with the steps he has taken to remedy the problem and satisfy the delinquencies make the possibility of recurrence or continuation of the tax problem minimal. Considering this case in context of the whole-person factors, I conclude that Applicant has mitigated the 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.b: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is GRANTED.

Marc E. Curry
Administrative Judge