



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



In the matter of:)	
)	
)	ISCR Case No. 23-00084
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett E. Petcher, Esq., Department Counsel
For Applicant: *Pro se*

11/29/2023

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 February 15, 2023, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. 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).

On March 16, 2023, Applicant answered the SOR, and requested a hearing. In April 2023, Applicant emailed Department Counsel and canceled his hearing request. Department Counsel sent a follow-up email requesting clarification from Applicant. Applicant responded back indicating that he wanted a “decision based on the written

record.” Department Counsel submitted the Government’s File of Relevant Material (FORM) on August 8, 2023. The evidence included in the FORM is identified as Items 2-7 (Item 1 includes pleadings and transmittal information, including the April 24-25, 2023 emails between Applicant and Department Counsel where Applicant requested a decision based on the written record). Applicant received the FORM on August 18, 2023. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. On October 5, 2023, he submitted four documents in response to the FORM, which I have marked as Applicant exhibits (AE) A-D. Items 2-7 are admitted into evidence, as are AE A-D. The case was assigned to me on November 9, 2023.

Findings of Fact

Applicant admitted some of the SOR allegations (§§ 1.b-1.c, 1.e-1.g, and 1.j) and denied others (§§ 1.a, 1.d, and 1.h-1.i). His admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 61 years old. He has worked for his current employer, a defense contractor, since August 2021, as a senior solution specialist. He has worked continuously since 2009, except for two periods of unemployment in November 2013 and from January 2015 to February 2015. He holds a bachelor’s degree. He married for third time in 2014. He has two adult children. (Item 3).

The SOR alleged Applicant failed to timely file his 2021 federal income tax return. It also alleged that he owed delinquent federal taxes for tax years 2014-2016 and 2019 totaling \$82,868 and he owed delinquent state taxes for tax year 2014, in the amount of \$90,000. (§§ 1.a-1.c). The SOR also alleged Applicant incurred seven delinquent consumer debts totaling approximately \$1,290. (§§ 1.d-1.j)

Tax Issues.

Applicant’s explanation for his tax difficulties was that in 2014 his son was diagnosed with multiple sclerosis, which caused him to be unable to pay his federal and state taxes. He also stated periods of unemployment contributed to his financial distress. (Item 2)

The record contains conflicting information concerning the filing of Applicant’s 2021 federal income tax return. In his SOR answer, Applicant denied that his 2021 federal return was not filed. He requested from the IRS a tax account transcript for tax year 2021 on October 21, 2022. That tax account transcript indicated that as of August 23, 2021, no tax return had been filed by Applicant. (Item 4) In his response to the FORM, Applicant submitted an IRS tax return transcript for tax year 2021. His request for this transcript was made on August 30, 2023. This transcript indicated that Applicant filed his 2021 tax return on August 1, 2022. (AE B) The filing deadline for 2021 was April 18, 2021. If an extension request was filed with the IRS, the filing deadline was

extended to October 17, 2022. There is no evidence Applicant filed an extension. Neither transcript shows that Applicant owed taxes for 2021. (Item 4; AE B)

Applicant admitted owing taxes to the federal government in the amount of approximately \$82,868 for tax years 2014-2016 and 2019. An IRS account transcript for tax year 2014 indicated that Applicant owed approximately \$50,690. (Item 4) During his April 2022 background interview, he told an investigator that he set up a payment plan with the IRS to pay \$1,500 monthly toward his delinquent federal taxes. He also said that he was two months behind on those payments. In his security clearance application (SCA), he stated that he resumed making his monthly payments to the IRS in October 2021, without providing corroborating documentation. He did not provide a copy of his payment plan with the IRS. He provided a copy of an IRS payment due notice dated September 6, 2023, showing that his \$1,500 monthly payment was due on September 18, 2023. The notice also showed that Applicant's total amount owed was approximately \$198,800 (any amount owed that exceeds the amount alleged in the SOR will not be considered by me for disqualification purposes, but I may consider it for mitigation and during my whole-person analysis). There is no documentation showing that Applicant made this monthly payment. (Items 2-4; AE C)

Applicant admitted in his SCA and his SOR answer that he owed \$90,000 to his state tax authority for his 2014 taxes. Aside, from this admission, he did not provide any further information on the status of this tax debt. The Government presented documentary evidence showing his state filed a lien against him in 2017 for unpaid state taxes in the amount of approximately \$24,000. There is no evidence showing this lien was released or that these taxes were paid. (Items 1-2; 5)

Applicant presented documentation showing that the alleged delinquent debts in ¶¶ 1.e-1.j were either paid or the accounts are now in good standing. While, the record does not contain information on whether ¶ 1.d was paid, its small alleged balance of \$52 makes it insignificant as a security concern. These debts have been resolved. (AE D)

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 concerns 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 apply:

- (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 owes delinquent federal taxes for tax years 2014-2016 and 2019. He also owes state taxes for 2014. He incurred delinquent consumer debts that he has subsequently paid. All the above disqualifying conditions are raised by the evidence.

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:

- (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's federal and state taxes remain unresolved. He did not provide sufficient evidence to show that his financial problems are unlikely to recur. His own evidence showed that his federal tax debt has risen past the original amount alleged in the SOR. AG ¶ 20(a) does not apply. While his son's medical condition and his brief periods of unemployment are conditions beyond his control, those events occurred almost 10 years ago. The evidence does not support that he has taken responsible actions to pay the delinquent taxes he owes. Apparently he has a payment plan with the IRS, but he failed to show that any payments have been made or the terms of the payment plan. There is also no evidence showing he has addressed his state tax debt. AG ¶ 20(b) does not apply.

There is no evidence of financial counseling, and the evidence is insufficient to establish that his tax debt is under control. AG ¶ 20(d) does not apply. He has shown a good-faith effort to address his delinquent debts, other than his tax debts. AG ¶ 20(e) applies to his consumer debts alleged, but not to the tax debts.

Applicant filed his 2021 federal tax return late in August 2022 and he apparently has a payment plan with the IRS. There is no evidence of a payment plan with his state tax authority. AG ¶ 20(g) has some applicability.

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 that Applicant resolved his consumer debts. But, I also considered his lack of progress in resolving his federal and state tax debt. Applicant has not established a track record of financial responsibility.

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
Subparagraphs 1.a, 1.d-1.j:	For Applicant
Subparagraphs 1.b – 1.c:	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