



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



In the matter of:)	
)	
)	ISCR Case No. 22-01492
)	
Applicant for Security Clearance)	

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

12/08/2023

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant provided evidence sufficient to mitigate the national security concern arising from his problematic tax history. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted his security clearance application (SCA) on January 23, 2019. On August 31, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F, financial considerations. The DCSA CAF acted 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 the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant filed an Answer on September 16, 2022 and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 29, 2022. The case was assigned to me on April 28, 2023. On June 23, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing would be conducted via video conference on July 18, 2023. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 5 were admitted without objection. Applicant testified. After the hearing, he timely submitted by August 18, 2023, nine exhibits marked Applicant's Exhibits (AE) A through I. AE A through AE I were admitted without objection. Also marked were Hearing Exhibits (HE) 1 through 5, emails explaining AE A through AE I. HE 1 through 5 were admitted without objection. DOHA received the transcript (Tr.) on July 26, 2023.

Findings of Fact

Applicant is 48 years old, a high school graduate with some college credit credits. He was married in March 2007 and divorced in March 2015. He has no children. He served on active duty in the U.S. Army from 2003 to 2009 and in the inactive reserves from 2009 to 2011. He was honorably discharged. (Tr. 18-20.) He was deployed to Afghanistan from March 2012 to October 2014, while employed by a defense contractor. (Tr. 26.) Since August 2018, he has worked for his current employer, a defense contractor. (GE 1.) He believes his security clearance expired in 2014, and that his employment depends on him having a clearance. (Tr. 18-29.)

Under Guideline F, the SOR alleged that Applicant: (a) owes back federal income taxes of \$368,213 for tax years 2011 through 2015; (b) owes back state taxes of \$15,000 (tax years are not alleged); and (c) owes the DOD \$930. (SOR.) Applicant admitted those allegations with explanations. (Answer.)

For SOR ¶ 1.a, his response is summarized as follows:

I admit. I made the initial mistake of not tracking my taxes during the years I was overseas. To address the issue, I started working with a tax help company. That was in 2018. Up to that point, I hadn't heard anything from the IRS. Once the tax company started doing their initial inquiries, I was bombarded with letters from the IRS. I had no idea how badly the fees and interest stacked up. Unfortunately, between how tax help business work, the slow pace of the IRS and the onset of Covid, this is still unresolved. I have worked with a few different tax help companies, at one point I retained a tax lawyer and finally I am working with a CPA who I feel deals with me in an honest fashion. Over the last four years, I have agreed to two separate payment arrangements with the IRS to where the money would automatically be debited from my account and both times, no money was debited and no contact was made in regards to updating the situation. The [IRS] payment arrangement in July 2020 was uploaded through the tax company website so I don't have a copy. The one from this year [January 2022] I will attach to this statement [the Answer].

I will readily admit that this has been the mistake of my lifetime. I will continue working to fix this and for the last seven years have had my taxes filed every year. I have increased my withholding on my initial forms for the last seven years so nothing is added to what I owe

Attached to Applicant's Answer is an Installment agreement signed by him dated January 13, 2022, calling for a monthly payment of \$2,250 beginning March 28, 2022. It was not, however, countersigned or approved by the IRS. Applicant did not submit the July 2020 payment arrangement with the IRS mentioned above, because he could not find it. (Tr. 59.)

Applicant's testimony about SOR ¶ 1.a was consistent with his Answer about that allegation. On September 20, 2018, he hired a tax help company (Company A), when he discovered how bad his federal tax situation had gotten while he was overseas. He attributed part of that to his going through a divorce in 2014 to 2015. Before he hired Company A, he had not received any notices from the IRS. It was not until late 2018 or early 2019 that he began receiving notices from the IRS. His agreement with Company A was for him to pay the company \$6,000 (\$300 per month) plus a \$28 per month fee in installments for its assistance in resolving his federal tax issues. Company A does not handle state tax issues. (Tr. 33-40, 56; AE B.) His bank records show a total of \$6,945 and a total of \$588 in fees paid to Company A or its affiliates from September 2018 through February 2020. (AE A.) He never fired Company A and made all payments under the agreement. (Tr. 61-62.) This contradicts later testimony that he fired Company A in March 2022. (Tr.78.)

Applicant testified that Company A began filing his late returns in January 2019 for tax years 2010 to 2018. (Tr. 39-41.) His tax transcripts show that his returns for tax years 2012 through 2015 were filed on March 25, 2019. His returns for tax years 2017 and 2016 were filed on January 7, 2019 and March 4, 2019, respectively. (GE 3.) On May 10, 2023, he hired a new accountant (CPA B) who filed his 2021, 2022 taxes, and will file his 2023 taxes. (Tr. 78; AE I.)

Applicant's exhibits AE D, E, F, G, and H, chronicle Applicant's efforts from August 2019 to January 2022 to prod Company A, and in turn the IRS, to address his sizeable tax delinquency. The following are salient excerpts from those exhibits (quotations are from Company A emails to Applicant):

"I was told [by IRS] that due to the balance (\$338,301.53), it must be assigned to a Revenue Officer. This can take 1-4 months. The good news is, collection action should stop while in this process. It also gives us time to get your financials together so we can have a plan when they call." (AE D **8/24/19**.)

"IRS has had longer delays in handling these [cases] over the last few months." (AE E **1/24/20**.)

“The IRS has decided that they will take the next 90 days to assign you a Revenue Officer. During this time they have placed your case on hold and will not pursue any further collection activity against you.” (AE F 11/24/20.)

“This is a quick email to let you know that we have not yet received any communication from the IRS assigning a Revenue Officer to your case. The good news is that a HOLD has been placed on all potential activity against you while they assign this person.” (AE G 2/23/21.)

“I contacted the IRS this past week because we have not yet seen any information regarding the Revenue officer they are assigning to your case. Their response was that they have not yet assigned your case to a Revenue officer and have held off on all collection activity until they appoint an agent to you.” (AE G 4/11/21.)

“I have attached the following form for your signature: **IRS Form 433D – Direct Debit Form (Installment Agreement)**. Please print, sign and either scan or fax the form back to me at the fax number below.” (AE H 1/11/22.) This is the Installment Agreement Applicant signed and dated on **January 20, 2022**, and attached to his Answer. This Installment Agreement is the last communication of record between him and the IRS via Company A. The IRS has not yet approved or disapproved the Installment Agreement he signed, dated, and returned to Company A in January 2022. Nor has it assigned a Revenue Officer.

Pending a response from the IRS, Applicant has filed his federal income taxes through CPA B. He is current on all his federal income taxes through 2022. To be sure that he is owed a refund each year, he does not take any exemptions or deductions he could otherwise take. That way, he always has a refund that the IRS takes to apply to back taxes. (Tr. 71-72.) CPA B has also advised him to do an offer in compromise, and that is Applicant’s goal now, while awaiting the IRS to act on his January 2022 Installment Agreement or assign a Revenue Officer. .

For SOR ¶ 1.b, his delinquent state tax of \$15,000, Applicant responded: “This is the same situation as subparagraph a. In order to make a payment arrangement with the State . . . , I’ve been advised to work with the IRS first as it takes precedence.” (Answer.)

Applicant testified that he spoke with a tax preparer in that State who calculated that Applicant owed \$15,000 for tax years 2010 to 2015. He filed those returns in 2020. He was advised by Company A that he should wait until the IRS issue has been resolved before paying the state taxes. (Tr. 74-75.) His plan is to work on an offer in compromise with the IRS, and if that gets resolved, do a payment plan with the State. The \$15,000 is something he can afford. He is not opposed to paying the State first, but that is not what his financial advisors told him. Even the State told him to take care of the IRS first. (Tr. 76-77.)

For SOR ¶ 1.c, a debt to DOD for \$930, Applicant responded: “I’m not exactly sure but I think it’s for a set of body armor that I signed for when I first deployed to Afghanistan in 2010 as a civilian contractor. When I tried to turn it back in, it was at a different location

and the CIF [Central Issuing Facility] refused to take it as it wasn't signed out from that location. I still have the armor packed and cleaned and ready to turn in." (Answer.) Applicant's testimony was consistent with his Answer. This happened about 10 years ago. He has no contacts in the United States to return the gear to. (Tr. 79-84.) The credit report does not provide a name or a phone number for the collection agency, just an address. The creditor is DOD. The debt was assigned to collections in February 2012. (GE 4.)

Applicant testified about his personal finances. He reviewed his Personal Financial Statement (PFS) (GE 3) and thought it was about accurate. (Tr. 86.) His PFS had a net monthly remainder of \$1,535. (GE 3.) His testimony updated that to \$1,134. (Tr. 89.) His job (\$6,000 per month) and a Veterans Administration payment (\$150 per month) are his only sources of income. (Tr. 84-85.) He has not taken any vacation since perhaps 2013. (Tr. 99.) He has no savings account. (Tr. 90-91.) He uses his checking accounts to pay rent and other expenses. At the end of the month, those accounts are about \$300 to \$400 for expenses and \$150 for rent. (Tr. \$90-91.) His employer deposits \$1.00 per month into a 401 (k); he has never chosen one or filled out any paperwork for one. (Tr. 90.)

Given Applicant's monthly net remainder of \$1,134, Department Counsel asked whether even if he had an IRS installment plan like the January 2022 proposed plan (calling for \$2,250 per month), it was not his intention to make those payments. He responded:

No, it was my absolute intention to make those payments. I told Company A that . . . I can't keep this up. I mean, I'm going to keep it up for as long as I can, but at some point the wheels are going to fall off. . . Company A said let go of all my external payments . . . don't pay your credit cards . . . don't pay your storage . . . don't pay your medical expenses . . . everything outside of like rent and food . . . goes to the IRS . . . [That] wouldn't have been sustainable, because that wouldn't be good for a clearance. I mean, it's the same thing, I'd still be hurting somewhere else. (Tr. 95-96.)

Applicant clarified Company A's role. He hired them to file his late federal returns. They helped him file those returns. He did not hire them to pay his debt to the IRS. He did not hire them to handle his state taxes. (Tr.104-105.)

Law and Policies

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

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law that apply together with common sense and the general factors of the whole-person concept. An administrative judge must consider all available and 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, then 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 in seeking a favorable security decision.

Analysis

Guideline F: Financial Considerations

The security concern under this guideline 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 any questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline notes conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) a history of not meeting financial obligations; and
- (f) failure to file . . . or pay annual Federal, state or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant's SOR debts are established by his admissions and the Government's credit report. AG ¶¶ 19(a), (b), and (f) apply.

AG ¶ 20 includes the following conditions that could mitigate security concerns arising from financial difficulties:

- (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; 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.

I have considered mitigating condition AG ¶ 20(a). Applicant's financial woes had their inception during his overseas deployments from 2010 to 2014, during which time he admittedly failed to track his taxes. That is quite some time ago, but his tax arrearages from those years of neglect continue to this day and are not fully resolved. That is, they are recurring. Those delinquencies are not mitigated by AG ¶ 20(a).

I have considered mitigating condition AG ¶ 20(b), which has two requirements. First, the conditions causing financial problems must have been "largely beyond" an applicant's control. Second, the applicant must have "acted responsibly" under the adverse circumstances he confronted.

In addition to not tracking his taxes while overseas, Applicant noted his 2014 to 2015 divorce as a factor. He also noted the slow pace of the IRS and the onset of Covid as factors. Those two were beyond his control. The initial circumstances that caused Applicant's tax problems, failure to track his taxes, was largely of his own making. The current situation is not, however, just the historic cause of his tax difficulties. It is the seemingly immutable stalemate that the IRS has imposed by remaining silent about his proposed payment agreement and the agency's delay in appointing a Revenue Officer to his case. Key were his divorce, the slow pace of the IRS, and Covid. Those were the current circumstances largely beyond his control.

Here, his actions after he discovered his tax thicket were commendable. Before he applied for a security clearance in January 2019, in September 2018, he hired Company A to advise him and to file his late federal tax returns. This was accomplished by Company A filing his late tax returns from January 2019 to March 2019. He successfully undertook that effort before the SOR was issued in August 2022. CPA B then filed his 2021 and 2022 taxes, and he is now current on all his federal income taxes through 2022. This is responsible conduct, giving him credit under AG ¶ 20(b).

The most difficult part of Applicant's case is his inability to defray any of his \$368,213 delinquent income taxes, fees, and penalties. In January 2022, via Company A, he proposed an installment agreement to the IRS, whereby he would pay \$2,250 per month beginning in March 2022 to retire this arrearage. From August 2019 to January 20, 2022, when he submitted his proposed installment plan to the IRS, the agency has not responded at all to Company A's inquiries about his proposal or to the agency's numerous promises to assign a Revenue Officer to his case. It has simply held up any collection actions. Applicant's tax fate is, therefore, in a legal limbo with no end in sight.

In the meantime, he continues to file his income tax returns and makes sure that he has a refund that the IRS can intercept to apply to his arrearage. Now it matters little whether he could make his proposed payments. His testimony was that he would do his best for as long as he could. What matters is that his case be assigned to a Revenue Officer to bring the IRS's considerable resources and expertise to bear on his thorny tax issue. As a fallback, he and CPA B are working on an offer in compromise to submit to the IRS. He had a plan and has taken steps to accomplish it. His efforts to engage the IRS have been steady and in good faith, and his testimony was honest and credible. On this record and with his finances, he has pursued every alternative that appears to be available. I find that AG ¶ 20(g) applies.

The Appeal Board has held that it is not necessary to pay off all the debts alleged in the SOR, nor is it required that they be paid off in any particular way. What is required is only that an Applicant have a reasonable plan to pay off his debts, and has taken some steps towards execution of that plan. See, e.g., ISCR Case No. 09-08462 at 3 (App. Bd. May 3, 2011). I find that the evidence supports that conclusion here.

SOR ¶ 1.b is for delinquent state taxes of \$15,000. Applicant has consulted his tax advisors (CPAs) and a State tax authority. He was advised to rectify his federal tax issues before addressing his state tax issues. He has simply followed their advice. I find in favor of Applicant on SOR ¶ 1.b.

SOR ¶ 1.c is for \$930. Applicant does not know to whom to return the gear that was issued more than 10 years ago. The credit report sheds little light on that question. The amount owed does not raise national security concerns. And the law does not require the doing of a futile act. See *Ohio v. Roberts*, 448 U.S. 56 (1980). I find in favor of Applicant on SOR ¶ 1.c.

Whole-Person Concept

Under AG ¶ 2(a), 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. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the "whole-person" concept and factors). In my analysis above, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

Applicant leaves me with no questions about his eligibility and suitability for a security clearance. Therefore, I conclude that Applicant has provided sufficient evidence to mitigate the security concerns arising under Guideline F, financial considerations

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant

Conclusion

I conclude that it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Clearance is granted.

Philip J. Katauskas
Administrative Judge