



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



In the matter of:)
)
) ISCR Case No. 21-02293
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

01/24/2024

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On May 4, 2022, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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 adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on April 10, 2023. He originally elected to have a hearing, which was scheduled for August 16, 2023, but was canceled at the request of Applicant. He subsequently elected to have his hearing converted to a decision on the written record in lieu of a hearing. Department Counsel submitted the Government's file

of relevant material (FORM), and Applicant received it on September 7, 2023. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 7 (Item 1 is the SOR). Applicant did not submit a response to the FORM or object to the Government's evidence. Items 2-7 are admitted into evidence. The case was assigned to me on November 30, 2023.

Findings of Fact

Applicant admitted all the SOR allegations. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 70 years old. He graduated from a military service academy in 1976 with a bachelor's degree and served on active duty until 1981. He received an honorable discharge. He earned an associate degree in 1981. He never married and has no children. He has worked for a federal contractor from 2002 until the present. He has held a security clearance since approximately 1976. (Item 3)

Applicant completed a security clearance application (SCA) in June 2020. In it he disclosed that he failed to file his 2013 through 2019 federal and state income tax returns due to neglect. For each year, he essentially stated the same:

I need to resolve this problem for the past 7 years. All withholding occurred, but I failed to file. Thus, I do not believe I owe taxes, except for possible penalties. I am consulting legal assistance to solve this problem. (Item 3)

Applicant noted his reason for failing to file or pay his taxes was "simple neglect" or negligence. He disclosed that he owed \$1.00. (Item 3)

Applicant completed government interrogatories in April 2022. He certified the accuracy of statements he made to government investigators in 2014 and 2020 and adopted them as accurate summaries of his interviews. (Item 4)

Applicant was interviewed by a government investigator in April 2014 as part of his background investigation for his security clearance. He told the investigator that he failed to pay any taxes for "2004/2005". He said he had not paid his taxes because he just hated doing it. He understood he may owe penalties. He said he did not file returns because he did not owe any taxes at the time. He received numerous letters from both his state government and the IRS regarding unpaid taxes. In May 2010, his wages were garnished by the IRS for \$10,000 of unpaid taxes for tax years 2005 and 2006. He told the investigator that he had federal liens on his property for failing to pay his federal income taxes. Once he satisfied the tax debt through the garnishment, the liens were removed. He was going to try and recoup some of this money with the help of an attorney. He told the investigator that he will be filing all his past tax returns during the current year and will pay any outstanding debt. (Item 4)

During his 2014 interview, Applicant also disclosed he was four months delinquent in paying his homeowner's association dues during 2013. He said he failed to do so because he was lazy. He was notified by letter from the homeowner's association that a lien might be placed on his property for failing to pay. Applicant paid the dues and avoided the lien. He admitted this was not the first time he was late paying these dues. (Item 4)

Applicant was interviewed by a government investigator in August 2020. He told the investigator that he did not file his tax returns for tax years 2013 through 2019 because he did not get around to it, and he was lazy. He said he was working with a commercial company to help him file his delinquent returns. He did not know if he owed taxes, but he would pay what he owed. (Item 4)

Applicant also disclosed to the investigator during his 2020 interview that in 2013 he had not paid his homeowner's association fees for four to five months. He eventually paid the amount due. He said his failure to pay these dues was due to forgetfulness. He volunteered that he was five months behind in paying his homeowner's association dues. He intended to pay the delinquent amount. In his SOR answer, he said he paid this debt, and it will not happen again. He did not provide corroborating evidence he has paid this debt.

In Applicant's response to interrogatories, he stated the following:

Unfiled 2010 through 2015 federal income tax returns were "being negotiated" by OTR (a tax service he hired).

Federal income tax returns for tax years 2016 through 2019 were filed in April 2022. He said it was unknown how much he owed.

State income tax returns for 2014, 2015, 2020 and 2021 will be filed in April 2022.

Federal income tax returns for tax years 2020 and 2021 will be filed in April 2022.

OTR is working on a repayment agreement for federal taxes owed.

Applicant stated in his interrogatory response that he had doubts whether he needed to file his 2007, 2008, and 2009 federal and state income tax returns. He did not say why. He said he needed to research it. He explained that the reason he has failed to timely file his tax returns is because of neglectfulness, and he is not a great financial manager. He believed he always had sufficient withholdings that would exceed his tax liability, and he would be entitled to refunds.

IRS tax transcripts from April 2022 for tax years 2021, 2020, 2019, 2018, 2017, 2016, 2015, 2014 show no tax return had been filed. Several tax years show inquiries were made to Applicant about non-filing of his tax returns. His 2013 tax transcript shows

a substitute return was prepared by the IRS in 2017. For tax year 2012, a substitute return was prepared by the IRS in 2014. He provided an IRS account balance that reflected he owed approximately \$20,890 for tax years 2010 through 2013. There was no information reported for balances owed for tax years 2014 through 2021. (Item 4)

In response to interrogatories about Applicant's state tax returns, he stated that he filed the returns for tax years 2014 through 2020 in April 2022. He believed he was entitled to refunds.

Applicant did not provide any supporting documents to show he filed any of the delinquent federal or state income tax returns. He did not provide any corroborating evidence that he has paid his delinquent taxes, is negotiating payment agreements, or has hired a tax service.

In Applicant's answer to the SOR, he stated he earns approximately \$168,000 annually. He owns a townhouse valued at \$800,000, which has no mortgage. He said he opted to purchase a smaller house because he is debt averse, and he does not like to owe money. He purchased a 2017 Corvette two years ago with cash. He said he has been working with a tax service since March 2021 and has agreed to pay his federal tax bill in a single payment, which he estimated was approximately \$36,000.

In SOR ¶ 1.d, the SOR alleges Applicant's home was foreclosed upon in 2018. In his answer, he stated:

I don't recall this event, but **I ADMIT** that this may well have happened. I believe that this foreclosure would have been driven by my HOA, not my mortgage company. I paid up those dues to a debt collector. On August 18 of that same year, I paid off the mortgage to [Lendor] with a \$76,890.48 credit union check. (Item 2)

Applicant's July 2020 credit reports reflect his mortgage account was being foreclosed due to payments 180 days past due. His August 2023 credit report shows he made a payment of \$76,890 for late payments. There is no updated evidence to corroborate the mortgage is foreclosed. (Items 5, 6)

Applicant stated in his SOR that he has held a security clearance for 46 years and has never failed to recognize the gravity of the privilege nor given anyone reason to doubt his allegiance to the United States. He said he is not susceptible to manipulation by any foreign power or subversive interest. (Item 2)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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(c), 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 avoided drawing 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. Directive ¶ E3.1.15 states 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 as to obtaining 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 as to 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

The security concern relating to the guideline 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. 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (b) unwillingness to satisfy debts regardless of ability to do so;
- (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 repeatedly failed to pay his HOA dues and did not provide evidence they are current. they remain delinquent. He repeatedly failed to file his federal and state income tax returns for tax years 2004 to 2020. He failed to timely pay taxes owed between 2004 through 2014. In 2010, his accounts were garnished to satisfy tax liens for delinquent taxes. He is currently indebted to the IRS in the approximate amount of at least \$20,892 for tax years 2010 through 2014. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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 persons 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 did not provide sufficient evidence that he has paid or attempted to pay any of his delinquent taxes. During his 2014 background interview, he admitted to not filing his income tax returns for multiple years and having his accounts garnished to satisfy tax liens. This should have been a wake-up call to Applicant that his timely filing and paying his taxes is an important part of his clearance viability. Instead, he said he was lazy and failed to comply with the rules regarding filing and paying his taxes. He repeated the same conduct with paying his HOA dues, requiring the association to take legal action against him. Applicant proudly mentions that his home is paid, he purchased a high-end sport car, and he has sufficient resources; all while failing to note that he has not complied with his legal responsibilities to file and pay his taxes. He provided statements that he has filed some tax returns, is working with a tax service, and is planning to pay a lump sum of \$36,000 to resolve his tax debt. However, he failed to provide corroborating documentation for any of the statements he made. Even if he did, he has spent years ignoring his legal responsibilities. None of the mitigating conditions apply.

I find in Applicant's favor regarding SOR ¶ 1.d which alleged his home was foreclosed. Although the process may have started, it appears he satisfied the amount owed.

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 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

The DOHA Appeal Board has held that:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with these things is essential for protecting classified information. ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Someone 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. August 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. 12-10933 at 3 (App. Bd. June 29, 2016).

Applicant has not met his burden of persuasion. He has a poor financial track record of paying his HOA dues and complying with rules and regulations associated with his duty to file his tax returns and pay his income taxes. The record evidence leaves me with serious 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.c:	Against Applicant
Subparagraph 1.d:	For Applicant

Subparagraphs 1.e:

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

Carol G. Ricciardello
Administrative Judge