



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



In the matter of:)	
)	
)	ISCR Case No. 22-01969
)	
Applicant for Security Clearance)	

Appearances

For Government: Karen Moreno-Sayles, Esq., Department Counsel
For Applicant: *Pro se*

01/22/2024

Decision

OLMOS, Bryan J., 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

Applicant submitted a security clearance application (SCA) on April 12, 2018. On December 12, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The DOD issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on December 12, 2022, did not provide any exhibits, and requested a hearing before an administrative judge. The case was

assigned to me on August 11, 2023. On August 29, 2023, DOHA issued a notice scheduling the hearing for October 3, 2023, by video-teleconference.

I convened the hearing as scheduled. During the hearing, Department Counsel offered Government Exhibits (GX) 1 through 7. Applicant testified and submitted exhibits (AX) A through I. All exhibits were admitted without objection. I held the record open until October 24, 2023, to allow both parties the opportunity to submit additional documents. Applicant timely submitted additional documents that I marked as AX J through O and admitted without objection. DOHA received the hearing transcript (Tr.) on October 12, 2023. The record closed on October 24, 2023.

Findings of Fact

In his Answer, Applicant admitted SOR ¶¶ 1.a and 1.b with explanations. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 67 years old. He was married from 1976 through 1981 and again from 1992 through 2007 with both relationships ending in divorce. He has three adult children. He served in the Marine Corps from 1974 through 1977 and received an honorable discharge. (GX 1-2; Tr. 25-28)

From about February 2001 through October 2017, Applicant served as a police officer for a municipality. After about four months of unemployment, he started with his current, sponsoring employer in March 2018 as a full-time security guard. He has not previously held a security clearance. (GX 1-2; Tr. 28-30)

The SOR alleges that Applicant failed to timely file his federal and state tax returns for tax years (TYs) 2014, 2016, 2017, 2018 and 2021 (SOR ¶¶ 1.a and 1.b). The allegations are established by his admissions, his responses to interrogatories, and by various IRS and state tax account transcripts.

Applicant testified that, prior to his divorce in 2007, his wife handled their tax filings. After the divorce, he struggled to maintain his financial and tax obligations. He testified that, when he was able to file, he would use a tax preparer and submit federal and state returns at the same time. (Tr. 44-54, 77-86)

Applicant's first known tax delinquency came in 2011. Unable to pay his mortgage and issue payments on a payday loan, he filed for Chapter 13 bankruptcy. He filed his TY 2011 federal return late, but did not recall the date. Details about Applicant's TY 2012 filings are also uncertain and he could not recall whether a tax debt was part of his bankruptcy payments. He completed his bankruptcy obligations, and it was discharged in 2014. (GX 1-3; Tr. 31, 44-46)

An IRS account transcript for TY 2013 shows that a return was filed in May 2014 and that Applicant was assessed penalties for the late filing and late payment. At the

time, he owed about \$1,176 in taxes. However, the tax debt was not resolved until payments occurred from December 2021 through March 2022. (GX 3; Tr. 49)

In his July 2022 response to interrogatories, Applicant detailed that he had not filed his federal and state tax returns for TYs 2014, 2016 and 2017, but stated his intent to do so that month. He testified that the federal and state returns for all three years were filed in about July 2022. He did not provide documentary evidence that he filed the federal returns. However, records show that the state returns for these tax years were filed in 2022 and 2023. In September 2023, the state issued a notice of assessment stating that Applicant owed an additional \$692 in taxes for TYs 2014 and 2016. He promptly paid this debt. The state also issued a notice denying Applicant a refund for TY 2017 because the filing was received more than three years after it was due. (GX 3-5; AX A-C, G-M; Tr. 51-57, 68-71)

An IRS account transcript reflects that Applicant filed his TY 2015 return in October 2016 and was assessed penalties for the late filing and late payment. At the time of the filing, Applicant owed about \$497. However, Applicant did not complete payments on that debt until November 2021. Records do not reflect when the state filing occurred, but do indicate that the state taxes for TY 2015 were paid. (GX 3; AX J; Tr. 59)

Applicant testified that he filed his federal and state TY 2018 returns in September 2023. He did not provide documentary evidence that he filed the federal return. However, state records confirm that the state return was filed and taxes paid in September 2023. (GX 3, 6; AX D, N; Tr. 73-74)

Applicant filed his TY 2019 federal and state returns on time. He received a penalty from the IRS for not prepaying his taxes, but the taxes have since been paid. He filed his TY 2020 federal and state returns late, in June 2021. He was assessed penalties for the late filing of his federal return and late payment. All federal and state taxes for TY 2020 were paid. (GX 3, 7; AX J; Tr. 76-78)

As of May 20, 2022, an IRS account transcript shows that Applicant had not filed his TY 2021 federal return. Applicant testified that he filed his federal and state returns in September 2022. He did not provide documentary evidence that he filed the federal return. However, state records show that the state tax filing and payment occurred in September 2022. (GX 3, 7; AX E; Tr. 77-79)

Applicant testified that he filed his TY 2022 federal and state returns in February 2023 and paid the taxes that were due. He stated it was his intent to timely file and pay his obligations in the future. (Tr. 80-81)

Applicant detailed that, after the Chapter 13 bankruptcy, his financial difficulties continued. In 2018, the mortgage account on his home went into foreclosure and he lost the property. Financial difficulties over the years made him reluctant, at times, to file his

tax returns because he could not afford to pay a tax preparer or pay the taxes that were likely due. (GX 1-2; Tr. 82-96)

In his April 2018 SCA, Applicant stated that “procrastination” also played a part in the escalation of his tax problems, but that he had “full intentions” of resolving the filings. He reiterated these intentions during his April 2019 background interview. At hearing, Applicant testified that the security investigation had “lit a fire” for him to resolve his tax and financial circumstances. Additionally, since starting with his current employer, his financial circumstances have significantly improved, and he believes he is in a much better position to handle his future financial and tax obligations. (GX 1-2; Tr. 39-42, 91-96)

Policies

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

The financial security concern is broader than the possibility that an individual might knowingly compromise classified information 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. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012)

The adjudicative guideline notes one condition that could raise security concerns under AG ¶ 19 potentially applicable in this case:

(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 and state income tax returns for TYs 2014, 2016, 2017, 2018 and 2021. The above disqualifying condition applies.

There are several pertinent conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's 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;

(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; 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 failed to timely file his federal and state tax returns for several tax years as alleged in the SOR. He referenced several reasons for his delay, including his divorce in 2007, an extended period of financial difficulties as well as his own procrastination. Although he stated in his April 2018 SCA, and again during his April 2019 background interview, that he was committed to resolving his tax issues, the delayed filings continued through at least TY 2021.

While difficulty in meeting financial obligations may force an applicant to choose the order in which he or she addresses unpaid debts, they do not provide a plausible excuse for failing to meet an important legal requirement, such as filing returns when due. ISCR Case No. 15-03019 at 6 (App. Bd. Jul. 5, 2017) Failure to file tax returns suggests that an applicant has a problem 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)

Additionally, Applicant's tax concerns were not limited to TYs 2014, 2016, 2017, 2018 and 2021. He also filed his TYs 2011, 2013, 2015 and 2020 returns late. These additional tax issues were not alleged in the SOR. However, they establish a history of non-compliance with tax obligations that undercut assertions of mitigation, since his tax problems are recent.

The Appeal Board has stated that even in instances where an “[a]pplicant has purportedly corrected [his or her] federal tax problem, and the fact that [applicant] is now motivated to prevent such problems in the future, this does not preclude careful consideration of [a]pplicant’s security worthiness in light of [his or her] longstanding prior behavior evidencing irresponsibility” including a failure to timely file federal income tax returns. See ISCR Case No. 15-01031 at 3 (App. Bd. June 15, 2016) (characterizing a “no harm, no foul” approach to an applicant’s course of conduct and employing an “all’s well that ends well” analysis as inadequate to support approval of access to classified information).

Applicant testified that all of his delinquent tax returns have since been filed and that his TY 2022 tax returns were filed and paid early. He only provided limited documentary evidence in support of these claims. However, even if it were established that all of the returns were filed, his long-term procrastination regarding his federal and state income tax obligations continue to cast doubt on his current reliability, trustworthiness, and good judgment. He has not provided sufficient evidence that he acted responsibly under the circumstances or established that he will be able to maintain compliance with his future tax obligations. None of the AG ¶ 20 mitigating conditions are fully applicable.

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 in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Following his divorce in 2007, Applicant experienced an extended period of financial difficulty that led to his filing for Chapter 13 bankruptcy in 2011 and continued

to include a foreclosure and loss of his home in 2018. During this period, Applicant delayed filing several years of tax returns, in part, because he could not afford filing assistance and out of fear of the tax bill.

Since starting with his current employer in March 2018, Applicant's financial issues have resolved. However, his tax issues continued to include TY 2021. Although he testified that he has resolved all of his tax issues, and intends to continue to do so in the future, he has failed to establish a track record of tax compliance. His struggles to meet this annual obligation raise unmitigated questions about his reliability, trustworthiness, and ability to protect classified information. The record evidence leaves me with questions and doubts as to his eligibility and suitability for a security clearance.

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.b:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Eligibility for access to classified information is denied.

Bryan J. Olmos
Administrative Judge