



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



In the matter of:)	
)	
)	ISCR Case No. 23-00644
)	
Applicant for Security Clearance)	

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

01/30/2024

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 April 6, 2023, the Department of Defense (DOD) issued 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 25, 2023, and elected to have his case decided 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 19, 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 1 through 7. Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. The Government's evidence is admitted. The case was assigned to me on January 10, 2024.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.h through 1.l. He denied the SOR allegations in ¶¶ 1.a through 1.g and 1.m through 1.o. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 41 years old. He is twice married and has four minor children who do not reside with him. He has some college credits but did not earn a degree. He has worked for his present employer, a federal contractor, since July 2017.

Applicant completed a security clearance application in May 2022. He did not disclose he had any delinquent debts, delinquent tax debts, or unfiled tax returns. He was interviewed by a government investigator in June 2022. During the interview, he disclosed that he owed money to the IRS and was delinquent in filing at least one tax years' return. He said he would file the delinquent return by July 2022. He believed he owed taxes to the IRS for tax years 2008 to 2017, but he could not afford to make a payment plan with the IRS. He said he wanted to pay his tax debt, but his wife had health issues and then lost her job during the COVID pandemic. (Item 4)

When Applicant was confronted with his delinquent debts by the government investigator he said generally the same thing about each debt, that is he was unaware of the debt, but he would look into it, and contact the creditor. If it was determined that he owed the debt, he would set up a payment plan to resolve each debt. (Item 4)

Applicant answered government interrogatories and was asked to comment on each of the debts alleged in SOR ¶¶ 1.h through 1.o. For each debt he noted that it was not paid and he was not making payments. He answered "no" to the question that asked if he had any adverse or delinquent accounts, including local, state, or federal tax debts that he currently owed. (Item 5)

The SOR alleged that Applicant failed to file his 2020 and 2021 federal income tax returns (SOR ¶ 1.a). It also alleged that Applicant was indebted to the federal government for delinquent taxes for tax years 2012 (\$2,989), 2014 (\$2,295), 2015 (\$1,275), 2016 (\$1,099), 2017 (\$1,819), and 2019 (\$2,297). (SOR ¶¶ 1.a through 1.g) In Applicant's SOR answer, he denied these allegations. IRS tax transcripts for tax years 2012 through 2021 were provided as part of the interrogatories. They substantiate Applicant owes the IRS for each tax year as alleged. For tax years 2020 and 2021 the transcripts report that no tax returns were filed, but he received a tax credit each year that was applied to balances he owed. These were the tax credits that were authorized as part of the pandemic relief.

Applicant did not provide evidence that he has a payment agreement with the IRS to satisfy his delinquent tax debts, and he did not provide proof of any payments towards these debts. He did not provide any documentary evidence of action he has taken to contact his creditors, verify his debts, and pay them.

In his interrogatories, Applicant stated that due to his wife's health issues and the COVID pandemic he is trying to get back on top of things and that was why he was working at his job. (Item 5)

Applicant's admissions in his answer, statement to a government investigator, interrogatories, tax transcripts, and credit reports from March 2023 and June 2022, support the SOR allegations. (Items 2-7)

Any derogatory information that was not alleged will not be considered for disqualifying purposes but may be considered in applying mitigating conditions and in whole-person analysis.

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 handing 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:

- (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 failed to timely pay his 2012, 2014, 2015, 2016, 2017, and 2019 federal income tax debt and these debts remain unresolved. He failed to provide evidence that he has filed his 2020 and 2021 federal income tax returns. He has numerous delinquent debts that are not resolved. There is sufficient evidence to support the application of the above disqualifying conditions.

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 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;

(e) the individual had a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of action to resolve the issue; 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's debts and tax issues are ongoing and remain unresolved. He did not provide any documentary evidence that he has paid his delinquent federal taxes, made payment arrangements with the IRS, or filed his delinquent tax returns. He did not provide

proof that he has contacted his creditors, made payment arrangements, or paid any of his delinquent debts. Applicant attributes his financial problems to his wife's unemployment and health issues. These are conditions beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly. He did not. His tax issues pre-date the pandemic and his wife's unemployment and health issues. He did not provide evidence he has participated in financial counseling or initiated a good-faith effort to resolve his debts. He did not provide evidence of any actions he may have taken to dispute his debts. AG ¶ 20(b) partially applies but is insufficient to mitigate the security concerns. None of the other mitigating conditions apply.

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.

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),

