



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



In the matter of:)	
)	
)	ISCR Case No. 21-02210
)	
Applicant for Security Clearance)	

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro Se*

02/07/2024

Decision

KATAUSKAS Philip J., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the security concerns raised under Guideline F, financial considerations. Eligibility is denied.

Statement of the Case

Applicant submitted his security clearance application (SCA) on June 19, 2020, in connection with his employment by a defense contractor. On May 30, 2023, following a background investigation, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. 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), which became effective on June 8, 2017.

On July 19, 2023 Applicant submitted an answer to the SOR (Answer) and requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) based on the administrative (written) record, in lieu of a hearing. On August 21, 2023, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1 through 8. On August 23, 2023, the FORM was mailed to Applicant. Applicant received the FORM on September 6, 2023. He was afforded an opportunity to note objections and to submit material in refutation, extenuation, or mitigation, and was given 30 days from receipt of the FORM to do so. He submitted no response. Government Items 1 and 2, the SOR and the Answer, respectively, are the pleadings in the case. Items 3 through 8 are admitted without objection. The case was assigned to me on December 6, 2023.

Findings of Fact

After a thorough and careful review of the pleadings and the Government's exhibits, I make the following findings of fact.

Applicant is 42 years old, has never been married, and has an adult daughter. From June 2007 to October 2016, he lived in a home he owned with his then girlfriend (who became his fiancée). After they broke up in October 2016, she bought him out in January 2020. Since October 2016, he has lived with a cohabitant. Since March 2018, he has worked for a federal contractor. He has been employed full time by federal contractors since October 2001. (Items 3 and 5.)

Under Guideline F, the SOR alleged that Applicant: (1) is delinquent on eight consumer debts totaling \$45,655; (2) is indebted to the Internal Revenue Service (IRS) for \$21,768 in unpaid taxes for tax years 2012 through 2015; (3) is indebted to his state for \$3,607 in unpaid taxes for tax year 2016; (4) failed to file federal income tax returns for tax years 2016 through 2021, and; (5) failed to file his state income tax returns for tax years 2016 through 2021. (Item 1.) He admitted all allegations (except SOR ¶ 1.g), with explanations that will be discussed below. (Item 2.)

In his Answer, Applicant said he planned to retire some of his debts once he received a lump sum payout from his pension fund. (Item 2, SOR ¶¶ 1.a., 1.d, 1.m, 1.n, and 1.o.) He did not explain when he might receive that payout. He failed to file state and federal tax returns, because he knew he owed taxes and could not afford to pay them. (Item 2, SOR ¶¶ 1.n, 1.o.) His personal subject interview (PSI) reported that his debts were not tied to events beyond his control. (Item 5 at 14.)

His personal financial statement (PFS) reported: total net monthly Income of \$4,330; total monthly expenses of \$1,645, and actual monthly expense payments of \$573. His monthly net remainder is \$2,112.

In response to interrogatories, Applicant stated:

In 2016, my [fiancée] and I ended our relationship and due to the extent of our bad relationship I chose to move out. I was still responsible to pay half of the bills in the house we purchased together. I found a roommate and had to pay half of the bills where I was staying. In addition to those bills, I was making payments to the IRS. I was concerned that if I filed my taxes right away and I owed money, I wouldn't be able to afford to make the payments. My money was stretched thin, my ex-[fiancée] successfully applied and was approved for a mortgage loan to solely purchase the house [in 2020], I no longer have to pay bills in my prior residence so I can now file my taxes and pay off current debt. (Item 4 at 12.)

Consumer Debts

SOR ¶ 1.a is a 2020 charged off auto loan for \$17,673. Applicant admitted this debt, and his PSI reported that he is paying \$300 per month. (Item 2; Item 5 at 12; Item 7 at 2; Item 8 at 2.) He did not document prior payments or the current status of the debt. This debt is unresolved.

SOR ¶ 1.b is a 2020 charged off credit card for \$11,250. Applicant admitted this debt, and his PSI reported that he was making payments. His most recent credit report (8/21/23) states "paying under a partial payment agreement" with the last payment in July 2023. (Item 2; Item 5 at 12; Item 6 at 6.) This debt is being resolved.

SOR ¶ 1.c is a 2020 charged off credit card for \$5,655. Applicant admitted this debt, and his PSI reported that he was making payments. His most recent credit report (8/21/23) states "paying under a partial payment agreement" with the last payment in July 2023. (Item 2; Item 5 at 12; Item 6 at 5, 6.) This debt is being resolved.

SOR ¶ 1.d is a 2020 charged off personal loan for \$4,690. Applicant admitted this debt with plans to pay it once he receives his pension payout. (Item 2.) Applicant's PSI reported that he was making payments on this debt. (Item 5 at 12.) His most recent credit reports, however, show the same balance as previous credit reports with the last payment made in October 2017. (Item 6 at 7; Item 7 at 3; Item 8 at 2.) This debt is unresolved.

SOR ¶ 1.e is a 2020 charged off personal loan for \$4,681. Applicant admitted this debt with plans to pay it once he receives his pension payout. (Item 2.) Applicant's PSI reported that he was making payments on this debt. (Item 5 at 12.) His most recent credit reports, however, show the same balance as previous credit reports with the last payment made in October 2017. (Item 6 at 6; Item 7 at 3; Item 8 at 2.) This debt is unresolved.

SOR ¶ 1.f is a 2022 charged off account for \$1,005. Applicant admitted this debt with plans to pay it once he receives his pension payout. (Item 2.) This debt is unresolved.

SOR ¶ 1.g is a credit card that went into collection in 2019 for \$525. Applicant denied this allegation and claimed it was paid in full. (Item 2.) He provided documents showing payments of \$50 and \$75 on November 27, 2022, and December 11, 2022,

respectively. (Item 4 at 14, 17.) But the latest document he produced still shows a balance of \$525 on November 29, 2022. (Item 4 at 15.) This debt is unresolved.

SOR ¶ 1.h is a credit card that became past due in 2022 for \$714. Applicant admitted this account and claimed that he has a payment arrangement to settle the full balance. His most recent credit report shows a somewhat higher balance than the previous credit report. (Item 6 at 9; Item 7 at 3.) He did not provide any documents showing a payment arrangement. This debt is unresolved.

The most recent credit report shows delinquent accounts not alleged in the SOR. There are two charged off accounts for \$821 and \$2,382. (Item 6 at 4, 8.) And there are three past due accounts totaling \$499. (Item 6 at 5, 9.)

Tax Delinquencies

Applicant admitted owing federal income taxes for tax years 2012 through 2015 and failing to file federal income tax returns for tax years 2016 through 2021. He stated that he was currently making payments to the IRS (Item 2.)

Applicant explained that in 2016, he and his then fiancée broke up. He moved out of the house they owned together. He found another roommate, but that meant he had to pay half of his fiancée's bills and half of his new roommate's bills. Money was tight. He failed to file tax returns, because he knew he owed taxes and was already making payments to the IRS. (Item 4 at 12.)

Applicant provided IRS tax transcripts for tax years 2012 through 2015 in both his interrogatory responses. (Item 4 at 26-31; Item 5 at 18-23.) Those show some payments made, but the last payment is for tax year 2015 made on December 3, 2021 (\$365). (Item 5 at 23.) The Payment Detail he provided dated December 5, 2021, shows four payments from September 13, 2021, to September 12, 2022, with the latest payment made for tax year 2014 on January 5, 2022. (Item 4 at 24.) Contrary to his Answer, there is no evidence history of timely payments being made on his federal tax debt. These debts are unresolved.

Applicant admitted owing his state income taxes for tax year 2016 and failing to file his federal and state income tax returns for tax years 2016 through 2021. (Item 2.) His plan is to file these returns and pay his taxes once he receives his lump sum pension buyout. (Item 2.) The record shows these issues have not been addressed and are unresolved.

Law and Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has noted, "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, the administrative judge must consider the adjudicative guidelines. These guidelines, which are flexible rules of law, apply together with common sense and the general factors of the whole-person concept. The 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, 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 relating to Guideline F 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.

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. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Guideline F notes conditions that could raise security concerns under AG ¶ 19. The followings conditions are applicable in this case:

- (a) inability to satisfy debts;

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

The SOR consumer debts and tax delinquencies are established by Applicant's admissions, his IRS documents, and the Government's credit reports. AG ¶¶ 19(a), (c), and (f) apply. The next inquiry is whether any mitigating conditions apply.

Guideline F 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, divorce or separation), and the individual acted responsibly under the circumstances);
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (g) failure to file . . . annual Federal, state or local income tax returns or failure to pay annual Federal, state or local income tax as required.

I have considered mitigating condition AG ¶ 20(a). Although Applicant attributed his financial problems to the breakup with his fiancée' in 2016, his consumer debts are of recent vintage, becoming delinquent mostly in 2020. In that same year, his ex-fiancée' was able to buy out his interest in the home they owned together. It is unexplained how being relieved of that financial burden caused him to become delinquent on eight consumer accounts and resulted in his unpaid federal taxes going back four years before his 2016 breakup. His federal and state income tax issues and his consumer debts (with two exceptions) are continuing. The SOR allegations are not mitigated by AG ¶ 20(a).

Applicant has presented evidence that SOR ¶¶ 1.b and 1.c are being resolved. Therefore, they are mitigated by condition AG ¶ 20(d).

I have also considered mitigating condition AG ¶ 20(b). AG ¶ 20(b) has an initial requirement. That is, an applicant's financial problems must have been the result of conditions "largely beyond" his control. Thus, those conditions must have caused the financial problems.

In this case, Applicant pointed to the breakup with his fiancée' as a cause of his financial problems. There is no doubt that ending the relationship with his betrothed was financially difficult. Such an event is akin to a divorce or a separation and thus largely beyond his control. But here, his tax problems in 2012 preceded his breakup in 2016 by four years. And his consumer debts became delinquent in 2020, four years after the breakup and when his ex-fiancée' had bought out his interest in their home. What is lacking is a nexus between his tax and consumer debt issues on the one hand and his breakup on the other hand. The SOR allegations are not mitigated by AG ¶ 20(b).

Applicant has not produced evidence that he has arrangements with the IRS or his state taxing authority to make payments and has been in compliance with such arrangements. The SOR tax allegations are not mitigated by AG ¶ 20(g).

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.

As part of my application of our facts to the whole-person concept, I have considered facts that are not alleged in the SOR. Unalleged conduct cannot be an independent basis for a denial. It can, however, be used to evaluate credibility and in the whole-person concept. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). The following facts will be considered for those limited purposes. The most recent credit report shows that Applicant has delinquent accounts not alleged in the SOR. There are two charged off accounts for \$821 and \$2,382. And there are three past due accounts totaling \$499. Although the total amount due is not substantial, given his record, I deem those facts to reflect adversely on his financial reliability.

Applicant leaves me with questions about his eligibility and suitability for a security clearance. Therefore, I conclude that Applicant has not provided sufficient evidence 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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b and 1.c:	For Applicant
Subparagraphs 1.d – 1.o:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant access to classified information. Eligibility for access to classified information is denied.

Philip J. Katauskas
Administrative Judge