



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



In the matter of:)	
)	
)	ISCR Case No. 22-02169
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

02/07/2024

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On December 30, 2022, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective June 8, 2017 (AG).

On March 4, 2023, Applicant answered the SOR and he requested a hearing before an administrative judge. I was assigned to the case on September 20, 2023. After coordinating a hearing date with Applicant, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 29, 2023, and the hearing

was convened as scheduled on November 9, 2023. The Government offered exhibits (GE) 1-6, which were admitted into evidence without objection. Its exhibit list and discovery letter were marked as hearing exhibits (HE) I and II. Applicant testified and offered Applicant exhibits (AE) A-D, which were admitted without objection. The record remained open and Applicant submitted AE E-F, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on November 22, 2023.

Findings of Fact

Applicant admitted all of the allegations. His admissions are adopted as findings of fact. After a careful review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 32 years old. He has worked for a defense contractor since 2019, as an operations manager. He was unemployed from April to June 2018 and from November 2010 to February 2011. He holds two associate degrees, earned in 2010. He used student loans to finance this education. He has been married for five years and has a stepchild from this marriage. He also has two children from a prior relationship for whom he pays child support of \$950 monthly. (Tr. 6, 24, 49; GE 1-2)

The SOR alleged Applicant had four delinquent student loans, in collection status, totaling approximately \$6,260. (SOR ¶¶ 1.b-1.e) It also alleged that he failed to file his 2018 and 2019 federal income tax returns, as required. (SOR ¶ 1.a)

Student Loans.

Applicant admitted the four delinquent student loans. He claimed to have made payments using his debit card through about January 2012 when he received a new bank debit card but never informed the student loan servicer about the change. He subsequently changed mailing addresses and did not receive correspondence from the loan servicer. Applicant admitted not making any student loan payments during this time. Sometime in 2019, the loan servicer effectuated a garnishment proceeding against Applicant and automated deductions came out of his paychecks. Sometime in 2020 or 2021, the deductions ceased because of the pandemic relief provided by the CARES Act for student loan payments. Applicant's most recent credit report shows that all four student loans are in collection status with the dates of first major delinquency ranging from April 2017 (two loans), May 2018 (one loan), and February 2021 (one loan). (Tr. 29-30, 43-46; GE 1-2, 5)

Recently (no specific date provided in the record), Applicant's student loans came under control of a new servicing provider. In July 2023, Applicant set up a payment plan with the provider and made his first \$60 monthly payment on October 2, 2023. The payments are set up to come out of his bank account monthly. The current balance on these student loans is approximately \$5,212. (Tr. 30, 46-47; AE A, C-D)

Tax Return Non-Filings.

Applicant admitted that he failed to timely file his 2018 and 2019 federal income tax returns. He testified that he cannot confirm that they have now been filed. He also has not filed his 2020 federal return and he does not know if his 2021 federal return was filed. (Since the non-filing of his 2020 and 2021 returns was not alleged in the SOR, I will not use this evidence for disqualification purposes, however, I may use it for credibility, determining mitigation, and in assessing the whole-person factors.) (Tr. 27, 37-38; SOR answer; GE 1-2)

Applicant explained that he got into his tax difficulties in approximately 2018, when he decided to change his W-4 tax withholding form so that nothing was deducted from his paycheck to make the monthly payments towards his federal taxes. He called this process “going exempt.” He took this action so he would have more money available to pay other financial obligations. He now understands he made a poor decision in that regard. When it came time to file his 2018 federal tax return, he did not have the funds to pay the amount he owed, so he did not file a tax return. He did the same thing regarding his 2019 and 2020 federal returns for the same reason. He knows he owes “a good amount of money” for these tax years. (He resides in a state that does not have a state income tax.) (Tr. 25-28; GE 4)

On June 25, 2021, Applicant completed a security clearance application. In it he disclosed that he failed to file his 2018 and 2019 federal returns and the reason for doing so. He estimated that he owed a total of \$30,000 in taxes for these two years. (Since the failure to pay his 2018 and 2019 taxes was not alleged in the SOR, I will not use this evidence for disqualification purposes, however, I may use it for credibility, determining mitigation, and in assessing the whole-person factors.) On June 28, 2021, he entered into an agreement with a tax service to assist him with filing his delinquent tax returns and working out a payment plan with the IRS. Even after engaging the tax service, Applicant could not document that his 2018 and 2019 federal returns have been filed. (Tr. 27; GE 1, 3)

Applicant provided documentation showing he entered into an addendum agreement with the tax service on November 21, 2023. He did not provide documentation that his 2018 and 2019 returns were filed after signing the addendum. Applicant is aware of how to obtain copies of his tax account transcripts, which will indicate whether a certain year’s tax return has been filed and the date it was received by the IRS. He obtained his 2017, 2018, and 2019 transcripts by using the IRS website in July 2022, in response to the Government interrogatories. At that time, the transcripts showed that neither the 2018 or 2019 tax returns had been filed. Applicant admitted at hearing that he has not gone back to the IRS website to request updated transcripts for his 2018 and 2019 tax returns. He also has not contacted the IRS directly about his non-filed tax returns. (Tr. 53-54; GE 4; AE F)

Other Financial Factors.

Applicant provided an updated personal financial statement that shows a net monthly remainder of \$2,308 after paying all expenses and debt servicing. He is current on his child support obligation and has never been delinquent. He also identified a non-SOR debt that he paid in November 2023. (Tr. 24, 32, 50, 53; AE B, E)

Policies

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.

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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (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 has delinquent student loans that remain unpaid. He also failed to timely file his 2018-2019 federal income tax returns. I find all the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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 did not provide evidence that he has filed his 2018 and 2019 federal tax returns. He created his tax problem himself by stopping his monthly withholdings from his paycheck, which created a large tax burden at the end of these tax years that he could not pay. He avoided the problem by failing to file these returns. This was a condition within his control. Even though he engaged a tax service to assist back in June 2021, he cannot produce evidence that it has filed these returns on his behalf. He produced no evidence that either he or the tax service has made arrangements with the IRS concerning his unfiled tax returns or his unpaid taxes. His reliability, trustworthiness and judgment are called into question. None of the mitigating circumstances apply to SOR ¶ 1.a.

While Applicant was negligent in failing to follow-up with his student loan servicer once his debit card changed, he ultimately started making payments through a garnishment order that ceased due to the CARES Act relief he received. He has now set up a monthly payment plan with his new student loan-service provider and is making monthly payments. His student loan balance is declining. AG ¶ 20(c) substantially applies to SOR ¶¶ 1.b-1.e.

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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. However, Applicant has not established a track record of financial responsibility when it comes to resolving his tax issues.

Overall, the record evidence leaves me with 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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b – 1.e:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge