



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



In the matter of:)	
)	
)	ISCR Case No. 22-01927
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeffrey A. Kent, Esq., Department Counsel
For Applicant: For Applicant: *Pro se*

02/23/2024

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised 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 May 13, 2020. On January 25, 2023, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DoD acted 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 adjudicative guidelines (AG) implemented by the and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on February 1, 2023, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 9, 2023. The case was assigned to me on August 11, 2023. On August 21, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled

to be conducted in the DOHA hearing room on September 20, 2023. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 9 were admitted in evidence without objection. Applicant testified and stated Applicant Exhibits (AE) A and B, would be submitted after the hearing adjourned. I kept the record open until October 4, 2023, to enable the parties to submit additional documentary evidence. Applicant submitted AE A through AE K, which were admitted without objection. DOHA received the transcript (Tr.) on September 28, 2023. The record closed on October 4, 2023.

Findings of Fact

In Applicant's answer to the SOR, he admitted SOR ¶¶ 1.a, 1.b, and 1.d with explanations and denied the allegations in SOR ¶¶ 1.c and 1.e, with explanations. His admissions are incorporated in my findings of fact.

Applicant is a 40-year-old employee of a defense contractor. He has been working for his current employer as lead warehouse technician since September 2021. He testified he previously held a clearance for 12 years. (Tr. at 21, 22-23.) He also works in the music department for his church and multiple entertainment companies doing weddings and corporate events. He has worked at his church since 2010. He has been with one of the entertainment companies for two years and with the other since 2011. (Tr. at 25.) He offered character letters from his church and work evidence attesting to his work ethic, integrity, and commitment to family. (AE A; AE B.)

He married in September 2016 and has two children, one high school age and the other starting grade school. A high school graduate, he has started taking computer courses to reach a certification level. (Tr. at 22; GE 1 at 12-13, 22 25, 27.)

SOR ¶ 1.a: Applicant failed to timely file, as required, Federal income tax returns for tax years 2016 through 2021 and as of the date of the SOR tax returns for tax years 2016, 2017, and 2021 remain unfiled. Applicant admits this allegation. The income tax transcript for 2016 shows no tax return filed in 2016 as of December 28, 2022. (GE 5.) After the hearing closed, he offered a 2016 Federal tax return signed by him on October 3, 2023, and an October 3, 2023 receipt from a commercial tax preparer. (AE I; AE K.) He cited losing his job in 2015 for getting "off track." (GE 5; Tr. at 27-28.) He did not provide a tax transcript for 2017. He was not sure if the 2017 tax return were filed and he believed they had filed an extension. (Tr. at 31.) He acknowledged his failure to file his 2018 tax returns on his SCA and in his security clearance interview. He cited in his security clearance interview losing his job in February 2018; learning his wife was pregnant in March 2018; having to move; and that his wife was in charge of filing their tax returns and he never asked about them. He stated the reason the 2018 tax return had been filed in August 2022 was to get caught up because they were looking to purchase a home. (GE 1 at 39; GE 2; Tr. at 32.) He told the investigator in July 2020 he thought the 2019 and 2020 tax returns had been filed. (GE 2 at 3.) The tax transcript for 2019 reflects he and his wife filed for an extension but that the tax return was not filed until May 2022. (GE 5; Tr. at 35.) He filed his 2020 tax return in June of 2022. (GE 5; Tr. 36.) He received a notice that his request for an extension for his 2021 Federal tax return had been

accepted on April 19, 2022. (GE 5 at 1-2; AE D.) He testified that “The only thing I can say is ... we should have went through an actual tax professional instead of trying to do it ourselves.” (Tr. at 37.) The October 2023 tax transcript for tax year 2022 shows that he had filed a request for an extension of time on April 15, 2022, but as of October 2023 his tax year 2022 tax return had not been filed. (AE C; AE G; Tr. at 36-37.)

SOR ¶ 1.b: Applicant failed to timely file, as required, state income tax returns for tax years 2016 through 2021 and as of the date of the SOR tax returns for tax years 2016, 2017, and 2021 remain unfiled. Applicant admitted the allegation. In his Answer he states he had filed an extension for “2017 and going forward.” (Answer.) He acknowledges he was a resident of his state in the time period in question. For 2016 he testified “I don’t believe my [state] would be filed either.” For 2017 he had no answer and stated he would have to log in to his portal. For the remaining years he stated “honestly, have to go through our records to see.” (AE D; Tr. at 39.) After the hearing closed, he offered a 2016 state income tax return signed by him on October 3, 2023, and an October 3, 2023 receipt from a commercial tax preparer. (AE J; AE K.) No other state returns were offered.

SOR ¶ 1.c: Applicant is indebted to the Federal government in the approximate amount of \$560 for delinquent taxes for tax year 2018. As of the date of the SOR the account remains delinquent. Applicant denied the debt and states in his Answer he and his spouse are “engaged” in a payment plan for the debt and that he thought it was resolved. (Answer) The IRS amount balance shows him owing \$560. (GE 5 at 3.) In response to Government interrogatories, he provided an untitled receipt dated July 22, 2022, reflecting a credit card payment for “individual tax return payments” in the amount of \$115.34. (GE 4 at 9.)

SOR ¶ 1.d: Applicant is indebted to a creditor for a store account that has been placed in collection in the approximate amount of \$1,450. As of the date of the SOR the account remains delinquent. In his Answer, Applicant admits this debt and states he is in a weekly payment plan. (Answer.) In his testimony he admitted he was taken to court and a 2022 judgment was awarded to the creditor. (Tr. at 41; GE 9.) He blamed the COVID pandemic for falling behind on his payments stating, “I had been making the payments correctly and had no issues, and then I hate to keep bringing up 2020, but happened and COVID and everything just kind of got thrown. Everything just kind of got thrown off so I missed some payments and didn't, unfortunately did not reach out to them to tell them that I was in financial straits...so they submitted my account to [the creditor].” (Tr. at 41-42.) He offered AE H showing he made twelve payments from January 13, 2023, through April 10, 2023, totaling \$1,601.40.

SOR ¶ 1.e: Applicant is indebted for a store account that has been placed for collection in the approximate amount of \$1,970. As of the date of the SOR the account remains delinquent. In his Answer, Applicant denied the allegation on the basis the debt had been paid in full. He testified the reason it became delinquent was because he lost his job shortly after he had purchased an engagement ring and with the loss of wages his payments slowed and eventually stopped. He stated he tried “a few times to

start back up paying it periodically but was not successful unfortunately.” (Tr. at 45.) In late 2020, the creditor took him to court and a default judgment was obtained in January 2021. (Tr. at 45; GE 8.) He testified he paid it in full around November 2022. (Tr. at 46.) In response to Government interrogatories dated October 13, 2021, and February 28, 2022, he marked the debt was not paid; that he was making payments; and that he had not attached documentation showing payment status or proof of payments. (GE at 4; GE at 4.) A January 2023 credit report shows the debt as a charge-off; with a last payment in February 2021; and the first major delinquency in November 2018. The account was opened in March 2014. (GE at 6.) He told the investigator he had missed payments because he was paying for the wedding and could not afford both. (GE 2 at 3.) He travelled overseas twice in 2016 for tourism, with both trips occurring after his 2016 wedding. (GE 1 at 31, 33.)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline F, Financial Considerations

The security concern under this guideline 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. 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 a person might knowingly compromise classified information to raise money. It encompasses concerns about a person’s self-control, judgment, and other qualities essential to protecting classified information. A person 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).

Applicant’s admissions, testimony and the evidence admitted establish the following disqualifying conditions under AG ¶ 19:

- (a) inability to satisfy debts;

(b) unwillingness to satisfy debts regardless of the 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.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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;

(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.

AG ¶ 20(a) is not established. Applicant's delinquent taxes and unresolved debts are long-standing and ongoing. His recent actions do not mitigate his inaction, which casts doubt on his current reliability, trustworthiness, and judgment.

AG ¶ 20(b) is not established. Applicant did experience conditions that contributed to his financial problems, unemployment and the COVID pandemic, which were largely beyond his control. He did not act responsibly under the circumstances. He did not begin to address these financial problems until well after the security clearance application process had begun.

AG ¶ 20(d) is not established. Applicant did not take action to resolve his delinquent taxes or his debts until he began the security clearance process. Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. While he made tax payments for different tax years in early 2022, applicants who begin to address their security-significant conduct only when their personal interests are at stake may be lacking in judgment and reliability. ISCR Case No. 16-01211 (App. Bd. May 30, 2018). A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection

procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) Even if an applicant has paid his or her debts, an administrative judge may still consider the circumstances underlying the debts for what they may reveal about the applicant's eligibility for a clearance. ISCR Case No. 14-02394 (App. Bd. Aug. 17, 2015.)

AG ¶ 20(g) is not established. In regard to Applicant's failure to timely file his Federal and state income tax returns for tax years 2016 through 2021, the DOHA Appeal Board has commented:

Failure to file tax returns suggests that an applicant has a problem with 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). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward *inducing an applicant to file tax returns. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. Id.* A person 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. Aug. 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. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis in original). See ISCR Case No. 15-01031 at 4 (App. Bd. June 15, 2016) (citations omitted); ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015). The Appeal Board clarified 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, 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 & n.3 (App. Bd. June 15, 2016) (characterizing "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 with focus on timing of filing of tax returns after receipt of the SOR).

In ISCR Case No. 15-01031 (App. Bd. June 15, 2016), the Appeal Board explained that in some situations, even if no taxes are owed when tax returns are not timely filed, grant of access to classified information is inappropriate. In ISCR Case No. 15-1031 (App. Bd. June 15, 2016) the applicant filed his 2011 Federal income tax return in December 2013, his 2012 Federal tax return in September 2014, and his 2013 Federal tax return in October 2015. He received Federal tax refunds of at least \$1,000 for each year. Nevertheless, the Appeal Board reversed the administrative judge's decision to grant access to classified information.

In ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017) the Appeal Board reversed the grant of a security clearance, discussed how AG ¶ 20(g) applied, and noted:

The timing of the resolution of financial problems is an important factor in evaluating an applicant's case for mitigation because an applicant who begins to resolve financial problems only after being placed on notice that his clearance was in jeopardy may lack the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his own interests. In this case, applicant's filing of his Federal income tax returns for 2009-2014 after submitting his SCA, undergoing his background interview, or receiving the SOR undercuts the weight such remedial action might otherwise merit.

In this instance, Applicant in his post-hearing submission provided evidence he filed his overdue 2016 Federal and state income tax returns on October 3, 2023, thirteen days after the hearing. His 2019 Federal tax return was filed in May 2022 and his 2020 Federal tax return was filed in June 2022. He did not establish a record of a payment plan to address the Federal tax debt but did provide a receipt indicating a payment. However, the Appeal Board clarified that even in instances where an "[a]pplicant has purportedly corrected [his or her] Federal [or state] tax problem, and the fact that [a]pplicant is now motivated to prevent such problems in the future, 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 pay Federal income taxes when due. See ISCR Case No. 15-01031 at 3 & n.3 (App. Bd. June 15, 2016) (characterizing "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 with focus on timing of filing of tax returns after receipt of the SOR).

Applicant admitted that he had not filed tax returns for tax years 2016, 2017, and 2021, and post-hearing submitted some evidence he filed his tax year 2016 Federal and state income tax returns. He did not provide any evidence his returns for tax years 2017 or 2021 were ever filed. Additionally, it appears that he did not claim or submit any evidence that any state returns were filed after tax year 2016. His failures to timely file his Federal and state income tax returns for tax years 2016 through 2021 are not mitigated at this time.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I have considered the character evidence attesting to his work ethic, integrity, and commitment to family. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated the financial considerations security concerns.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	Against Applicant

Conclusion

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

Charles C. Hale
Administrative Judge