



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



In the matter of:)
)
) ISCR Case No. 22-01260
)
Applicant for Security Clearance)

Appearances

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

03/12/2024

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 November 8, 2020. On December 30, 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 January 19, 2023, did not provide any exhibits, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on September 11, 2023.

On October 5, 2023, DOHA issued a notice scheduling the hearing for November 30, 2023, by video-teleconference.

I convened the hearing as scheduled. Department Counsel offered into evidence Government Exhibits (GX) 1 through 4 which were admitted without objection. Applicant testified but did not provide any exhibits. I held the record open until January 3, 2024, to allow both parties the opportunity to submit additional documents. Neither party submitted additional documents. DOHA received the hearing transcript (Tr.) on December 7, 2023. The record closed on January 3, 2024.

Findings of Fact

In his Answer, Applicant admitted SOR ¶¶ 1.a-1.f 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 50 years old. He was married in 1989 and divorced in 2008. He remarried in 2010 and has two adult children and one adult step-child. He attended some college from 1991 through 1996. He returned to college in 2014 and completed a bachelor's degree in 2018. From about 2003 through 2016, he worked as a director of worship in a church. In April 2015, he began working part-time with his current employer. In 2016, he switched to full-time with his employer and continued to work part-time as an independent contractor for the church. In 2023, he changed positions with his current employer to business development. He also described earning a small amount of income from royalties he collects from his work as a musician. (GX 1, 3; Tr. 17-25, 41-44)

The SOR alleges that Applicant failed to timely file his federal and state income tax returns for tax years (TYs) 2018, 2019 and 2021 (SOR ¶¶ 1.a-1.d) and that he owed delinquent taxes of \$3,409 for TY 2018 (SOR ¶ 1.f) and \$3,368 for TY 2019 (SOR ¶ 1.e). The allegations are established by his admissions, his responses to interrogatories, and by various IRS and state tax documents. (GX 1-4)

Applicant's tax issues began with TY 2018 when he tried to deduct additional expenses from his part-time work for the church as an independent contractor while he was full-time with his current employer. In early 2019, Applicant hired an individual to prepare his TY 2018 federal and state income tax filings. That person was slow to request necessary information from Applicant and Applicant was slow to respond. He testified that, as the deadline drew near, "there [were] additional things that they were asking for that I did not have at the time ... I became frustrated with the preparer, and we missed the filing deadline, and it continued to drag on into the summer, into the fall, and I did not file an extension. They didn't even recommend that I file an extension." At an unspecified date, he hired another tax preparer who, similarly, was unable to complete his TY 2018 filing. He testified then, "I tried to do it myself and tried to put my head through a wall, trying to figure it all out." (GX 1-3; Tr. 24, 39-43, 48-50)

With TY 2018 unresolved, Applicant also failed to timely file his TY 2019 federal and state income tax returns and his tax situation began to “snowball.” He testified that he began to look for another tax preparer that would be more responsive, but also admitted that he procrastinated during this period out of frustration over the process. (GX 1-3; Tr. 42-45)

Applicant disclosed both delinquent tax returns in his November 2020 SCA and stated that he “expect[ed] the situation to be resolved before January 2021.” However, he then failed to file his TY 2020 return on time. He hired a new tax preparer in late 2021. In December 2021, he filed his federal and state income tax returns for TYs 2018, 2019 and 2020. (GX 1-3; Tr. 42, 48-54)

Federal tax account transcripts, printed in October 2022, reflect that Applicant received penalties for the late filing of his TYs 2018, 2019 and 2020 income tax returns and that he owed about \$6,784 in delinquent federal taxes for TYs 2018 and 2019. Applicant did not owe any additional taxes for TY 2020. An installment agreement was established in June 2022 where Applicant would pay \$75 per month. However, documents only show a \$44 payment made in August 2022 and a \$75 payment made in September 2022. He testified that payments were ongoing but did not provide any additional payment records. (GX 2-3; Tr. 21, 27-28)

Although Applicant claimed to have continued working with the tax preparer, he failed to timely file his TY 2021 and TY 2022 federal and state income tax returns. At the hearing, he testified that his work as an independent contractor as well as royalties he collected from his music again complicated his income tax returns. He also described difficulties in communicating with the tax preparer as a cause for the delays. He switched to another tax preparer in early 2023 and was scheduled to meet with her the day after the hearing to finalize his TY 2021 and TY 2022 income tax returns. He testified that this new tax preparer was great to work with and he intended to retain her services to prepare his TY 2023 and future income tax returns. (GX 4; Tr. 37-40, 52-55)

Outside of his delinquent tax filings and back taxes owed, Applicant had no other financial issues. Based on his salary, his work as an independent contractor and a small amount of royalties, he estimated that he earned about \$135,000 to \$140,000 annually and was able to meet his monthly expenditures. (GX 1, 3; Tr. 44-46)

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 2018, 2019 and 2021. Records reflect that he owes about \$6,784 in back taxes for TYs 2018 and 2019. 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; 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.

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 tax 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)

Applicant failed to timely file his federal and state income tax returns for TYs 2018, 2019 and 2021 as alleged in the SOR. He referenced several reasons for his delay including the need to submit a complicated income tax return based on deductions he wanted to take as a part-time independent contractor as well as his inability to hire competent tax preparers. However, he also admitted that his own frustration and procrastination played a part in the delayed filings. Although he stated in his November 2020 SCA that he was committed to resolving his TY 2018 and TY 2019 federal and state income tax filings by January 2021, he did not submit the returns until December 2021. Additionally, as of the November 2023 hearing, Applicant still had not filed his TY 2021 federal and state income tax returns.

Applicant also acknowledged that he owed back taxes for TYs 2018 and 2019. While there is evidence in the record that an installment agreement was established in June 2022, documents only show two payments occurring after that agreement, through September 2022. Applicant did not provide any additional documentary evidence of payments.

Additionally, Applicant's tax concerns were not limited to TYs 2018, 2019 and 2021. He also failed to timely file his TY 2020 federal and state income tax returns and, as of the hearing date, still had not filed his TY 2022 federal and state income tax returns. 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 and ongoing.

While Applicant appeared motivated to resolve his tax issues and has otherwise maintained sound financial circumstances, his inability to consistently meet his federal and state income tax obligations continues to cast doubt on his current reliability, trustworthiness, and 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.

Beginning with TY 2018, Applicant struggled to collect the necessary documents to submit a complicated income tax return. A combination of poor service from his tax preparers and his own procrastination allowed the issue to “snowball” into several years of delayed tax filings and back taxes owed. Although he testified to finally finding a tax preparer capable of timely managing his filings and reiterated his own commitment to timely addressing his future tax obligations, he 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.f:	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