



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



In the matter of:)	
)	
)	ISCR Case No. 22-01266
)	
Applicant for Security Clearance)	

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: *Pro se*

03/05/2024

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns raised by his federal tax issues and other delinquent debts. National security eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on May 28, 2021. On September 8, 2022, the Department of Defense Consolidated Adjudication Facility (DOD CAF) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on September 20, 2022, and elected to have a hearing. (Answer) The case was assigned to me on January 26, 2023. On February 7, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for March 13, 2023. I convened the hearing as scheduled via video teleconference on Microsoft Teams. I marked the February 1, 2023 case management order as Hearing Exhibit (HE) I; Department Counsel’s (DC) exhibit list and identification of SOR Allegations HE II; and DC’s January 6, 2023 discovery letter as HE III. Government Exhibits (GE) 1 through 7 were admitted without objection, and Applicant testified. At the hearing, per Applicant’s request, I held the record open until March 27, 2023, to allow him to submit additional documentation. He timely submitted documents, Applicant Exhibits (AE) A through C, and they were admitted without objection. DOHA received the transcript (Tr.) on March 22, 2023, and the record is closed.

Findings of Fact

Applicant is 60 years old and has an adult son. He married his wife in 1986; however, they have been separated since 1999. He received an associate degree in computer networking and technology in approximately 2004. He has worked as a technical-support specialist for his current employer, a DOD contractor, since May 2021. He served on active duty in the U.S. Navy from 1983 until 1984, when he was honorably discharged as first-class petty officer. He then served in the active and inactive Naval Reserves. He previously held a top-secret clearance during his military service and is currently seeking a secret security clearance. (GE 1; GE 2; Tr. 9-10, 17-)

The SOR alleged Applicant failed to file his federal income tax returns, as required, for tax years (TY) 2013 and 2014 (SOR ¶ 1.a). Additionally, he owes the I: \$1,117.22 for tax year 2016 (SOR ¶ 1.b); \$631.89 for tax year 2017 (SOR ¶ 1.c); and \$556.04 for tax year 2020 (SOR ¶ 1.d). The SOR also alleged Applicant has three delinquent non-tax debts totaling an additional \$1,656. He admitted SOR ¶¶ 1.a to 1.e and denied 1.f and 1.g. (Answer)

Applicant's federal income tax information is detailed in the chart below:

Tax Year	Answer Re: Federal Taxes	Status	Source
2013 1.a	Admits in Answer	No Account Transcript; No proof of payment agreement; No proof that return was accepted; <u>No proof of filing</u>	Answer; GE 5 at 1; Tr. at 27-28, 35, 42-43
2014 1.a	Admits in Answer	No Account Transcript; No proof of payment agreement; No proof that return was accepted; <u>No proof of filing</u>	Answer; GE 5 at 1; Tr. at 35, 42-43
2016 1.b	Admits in Answer	Filed 5/8/17; No evidence of extension; <u>Balance: \$1,117.22</u>	Answer; GE 4 at 15-17; GE 5 at 1, 4-5; Tr. at 45-50, 58
2017 1.c	Admits in Answer	Filed 6/4/2018; No evidence of extension; 3/26/2022 - \$1,000 payment; <u>Balance: \$631.89</u>	Answer; GE 4 at 18-20; GE 5 at 6-7; Tr. at 46, 51-58
2018 1.a	Admits in Answer	IRS Account transcript dtd 8/22/2022 – <u>No filing</u>	Answer; GE 4 at 21-25; GE 5 at 1, 8; AE C; Tr. at 42-43
2020 1.d	Admits in Answer	Filed 4/4/2022; No evidence of extension; <u>Balance: \$539.43</u>	Answer; GE 3 at 8; AE C; Tr. at 51, 58-62

In Applicant's May 2021 SCA, he disclosed he failed to file and pay his federal and state income taxes for tax year 2020. He indicated he had "been having ... ongoing issues with [his] taxes." He estimated the largest amount he owed was \$27,000 but claimed he had paid most of the debt. He also disclosed two vehicle repossessions, and indicated they were the result of his ongoing tax issues. (GE 1 at 43-45)

In July 2021, Applicant was interviewed by a government investigator, and his financial issues were discussed. At that time, he disclosed he had not filed his federal

income tax returns for TYs 2016 through 2020, despite contacting the IRS, tax advocates, and a “tax collector” for more details. His tax issues were an ongoing problem, in part, due to withdrawals from his retirement accounts. He told the investigator he owed \$7,500 to the IRS, and he intended to resume making payments by the end of 2021. (GE 4 at 3)

DOHA sent Applicant interrogatories at an unspecified date, and he responded in August 2022. In his response, he adopted the summary of the July 2021 security interview, discussed *supra*, and he answered additional questions regarding the status of his unfiled income tax returns and delinquent taxes. He claimed he filed his federal income tax returns through TY 2021. He was asked to provide copies of his IRS account transcripts for TY 2015 through 2021; however, he provided IRS wage and income transcripts. A second request was sent to him in August 2022, and he provided IRS account transcripts for TY 2016 to 2021. (GE 4; GE 5; Tr. 15, 25-26)

At the hearing, Applicant testified that his tax issues started in 2000. In 2005 or 2006, the IRS notified him he owed approximately \$27,000. At some unrecalled year, he filed without having all his W-2s, and the IRS accused him of fraud. (Tr. 24-25) He utilized tax professionals in the past to file his taxes but at the hearing could not recall which TY were filed for him by others. (GE 3 at 6; Tr. 25-26, 29)

Applicant lived in State A from 2001 to 2016. He received a \$20,000 buyout from Company A to move to State B in 2016. In 2017, he “cashed in” stock options from Company B, worth \$16,000, and in 2018, he withdrew \$16,000 from his 401k at Company B to pay his bills. He had difficulty obtaining the necessary tax documents related his early withdrawal to file his tax return. In 2021, he moved from State B to State C, at that time he “cashed out” \$20,000 from Company B 401k to pay bills. (Tr. 26, 29-41)

Applicant testified he failed to file his federal income tax returns for TYs 2013, 2014, and 2018 in a timely manner because he did not have all the requisite W-2s. However, he believed he paid the taxes he owed for TY 2013, as he had previously set up “a couple payment plans” with the IRS and “increased the taxes that came out of [his] check.” However, he did not provide account transcripts or proof of filing for TYs 2013 and 2014 at the hearing or in his post-hearing submission. Nor did he provide proof of payments or resolution of his outstanding federal taxes for TYs 2016, 2017, and 2020. (Tr. 27-28, 32)

Applicant provided a document from a tax preparer for his TY 2018 federal income tax return. In some places the document is dated March 12, 2022, and it indicates Applicant is entitled to receive a refund of \$185; however, it is not clear the return was filed and received by the IRS, nor does it reflect any potential late fees or penalties. According to his August 22, 2022 IRS account transcript for TY 2018 (included in response to interrogatories), the IRS had not received a filing from him. He did not provide an updated account transcript after the hearing. Applicant filed his TY 2019 federal income tax return late on April 4, 2022, and there is no evidence in the record of an extension. He did not provide proof of payments or resolution of his outstanding federal taxes for TY 2020. Finally, he testified that his last proactive contact with the IRS was in 2016. (GE 5 at 9; AE A; AE C; Tr. 35-36)

Applicant testified he resolved SOR ¶ 1.e, a \$166 insurance debt placed for collection in June 2002; however, he failed to provide proof of resolution. He provided documentation demonstrating he resolved SOR ¶¶ 1.f (\$1,255/cellular bill) and 1.g (\$235/medical bill) in February 2022. These accounts became delinquent in December 2019 and October 2020, respectively. Additionally, SOR ¶¶ 1.f and 1.g do not appear on his most recent credit bureau report. (GE 6 at 4-7; GE 7; AE B; Tr. 66-72)

Applicant currently earns \$71,000 annually, and, after paying his bills, his net monthly remainder is less than \$500. As of the date of the hearing, he had \$25 in his savings account, \$2,000 in his checking account, and approximately \$24,000 in his retirement account. He does not follow a written budget, nor has he received credit counseling. (GE 3 at 9-11; Tr. 18-20, 24)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines 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."

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 the applicant or proven by Department Counsel." The applicant 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.

Section 7 of EO 10865 provides that adverse 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 concern under Guideline F (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

Applicant's admissions and the documentary evidence establish the following disqualifying conditions under AG ¶ 19:

- (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.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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 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.

Applicant's tax issues are current, ongoing, and frequent. He testified his tax issues started in approximately 2000. When the record closed, he failed to prove that he filed his federal income tax returns for TYs 2013, 2014, and 2018. Additionally, the documentation in the record indicates he owes the IRS approximately \$2,288 for TYs 2016, 2017, and 2018. His failure to file his federal income tax returns in a timely manner over several years, make payments, or establish a payment plan with the IRS reflects a lack of responsibility, trustworthiness, and good judgment.

According to Applicant, his tax issues are the result, in part, of withdrawals from retirement plans. However, he has not demonstrated he has acted responsibly under the circumstances to address and resolve his self-created tax issues in a timely manner. He provided documentation he resolved two of his non-tax related debts; therefore, AG ¶(d) applies to SOR ¶¶ 1.f and 1.g. Mitigation under AG ¶¶ 20(a), 20(b), and 20(g) was not established for SOR ¶¶ 1.a to 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 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. Applicant failed to file and pay his federal income tax returns in a timely manner between 2013 and 2020, and to resolve these issues after the SOR was issued. Overall, he has not demonstrated the actions of a responsible, reliable, and trustworthy person. I conclude he did not meet his burden of proof and persuasion. He failed to mitigate 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
Subparagraphs 1.f - 1.g:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest of the United States to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

CAROLINE E. HEINTZELMAN
Administrative Judge