



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



In the matter of:)	
)	
)	ISCR Case No. 22-02588
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: William H. Miller, Esq., Department Counsel
For Applicant: *Pro se*

03/18/2024

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 January 9, 2023, 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 January 31, 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 November 2, 2023, and the hearing was

originally scheduled for November 14, 2023. I granted a continuance until December 1, 2023, when the hearing convened as rescheduled. The Government offered exhibits (GE) 1-8, which were admitted into evidence without objection. Its exhibit list and discovery letter were marked as hearing exhibits (HE) I and II. Applicant testified, but he did not offer any exhibits at the hearing. The record remained open until January 5, 2024, to allow Applicant to submit additional evidence, which he did not submit. DOHA received the hearing transcript (Tr.) on December 11, 2023.

Findings of Fact

Applicant admitted all but two allegations (SOR ¶¶ 1.h-1.i), which he denied. 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 35 years old. He has worked for a defense contractor since 2013, as a field engineer. During parts of 2022 and 2023, he also held two different part-time positions, both working in the informational technology field. He held one part-time position (PT1) for approximately three months in 2022. He held his second part-time position (PT2) from about August 2022 to February 2023. He holds an associate degree, earned in 2018. He married in 2011 and divorced in 2018. He has one child from a prior relationship for whom he pays child support of \$2,028 monthly. (Tr. 6, 23-25, 28-29; GE 1)

The SOR alleged that Applicant failed to file his 2020 and 2021 federal and state income tax returns, as required. (SOR ¶¶ 1.a-1.b) It also alleged Applicant had eight delinquent debts, either charged off or in collection status, totaling approximately \$61,000. (SOR ¶¶ 1.c-1.j)

Tax Return Non-Filings.

Applicant admitted that he failed to timely file his 2020 and 2021 federal and state income tax returns. He testified that those tax returns remain unfiled as of the date of his hearing, December 1, 2023. He also has not filed his 2022 federal and state tax returns. (Since the non-filing of his 2022 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. 26, 37, 39; SOR answer; GE 2)

Applicant explained that the reason he had not filed his 2020 and 2021 federal tax returns was because he was in a dispute over the amount of child support he should pay and an attorney told him those returns could be used against him to establish a higher child support payment plan. Later, he realized this information was not helping him with his child support case. He then talked to a financial advisor and is gathering the necessary documents to file these returns, but as of yet, he has not “pulled the trigger” to file his delinquent federal returns for 2020 and 2021. (Tr. 26, 37-39; SOR Answer; GE 2)

Applicant explained he had not filed his state tax returns for 2020 and 2021 because he moved from that state in 2019 and did not believe he owed state income tax to that state. He acknowledged in his testimony that he owned a house in that state from which he derived rental income of approximately \$13,500 a year. This would require him to file state income tax returns, which he has not done. (Tr. 34-35, 40; SOR Answer)

Delinquent Debts.

The status of the SOR debts is as follows:

SOR ¶ 1.c-\$21,476. This is an automobile loan for a repossessed car. Applicant testified that he purchased this Italian automobile in approximately 2019. The car was valued at approximately \$84,000. Shortly thereafter, he became aware that he was going to be the father of a child and the subsequent child support ramifications. He elected to voluntarily return the car to the dealership approximately three months after his purchase. The amount alleged in the SOR was the payments he owed at the time of his voluntary surrender. The charged-off amount by the creditor was approximately \$84,000. During his August 2022 background interview, he told the investigator that he planned to set up a payment plan or pay a lump-sum payment on the outstanding balance. Applicant produced no evidence that he made arrangements to pay or settle this debt and has not been in contact with the creditor in the last year. This debt is unresolved. (Tr. 42-44; GE 2-8)

SOR ¶ 1.d-\$14,725. The debt arose from a home equity loan. Applicant claimed that he was making payments and was current on this debt. He failed to provide documentation supporting his assertion. His most recent credit report in the record shows that this debt was charged off. It reflects the last payment made was in October 2021. This debt is unresolved. (Tr. 45; GE 8)

SOR ¶ 1.e-\$13,047. This is a delinquent credit card. Applicant admitted the debt and his failure to make any payments on it. His most recent credit report in the record shows that this debt was charged off. It reflects the last payment made was in March 2021. This debt is unresolved. (Tr. 46; GE 8)

SOR ¶ 1.f-\$4,958. This is a delinquent credit card. Applicant admitted the debt and his failure to make any payments on it. His most recent credit report in the record shows that this debt was charged off. It reflects the last payment made was in September 2021. This debt is unresolved. (Tr. 47-48; GE 8)

SOR ¶ 1.g-\$3,725. This is a delinquent credit card. Applicant admitted the debt and his failure to make any payments on it. His most recent credit report in the record shows that this debt was charged off. It reflects the last payment made was in September 2021. This debt is unresolved. (Tr. 47-48; GE 8)

SOR ¶ 1.h-\$2,256. This is a delinquent credit card that Applicant admitted. His most recent credit report in the record shows that this debt was charged off. It also reflects that he settled the debt for less than the full amount in February 2023. This debt is resolved. (Tr. 48-49; GE 8)

SOR ¶ 1.i-\$453. This is a delinquent credit card that Applicant admitted. His most recent credit report in the record shows that this debt was charged off. It also reflects that he settled the debt for less than the full amount in September 2022. This debt is resolved. (Tr. 49-50; GE 8)

SOR ¶ 1.j-\$2,718. This is a delinquent credit card. Applicant admitted the debt and his failure to make any payments on it. A credit report in the record shows that this debt was charged off. It reflects a date of last activity as April 2022. This debt is unresolved. (Tr. 51; GE 4)

Other Financial Factors.

Applicant testified that his gross monthly salary from his full-time position is approximately \$10,500. His gross monthly salary from PT1 is approximately \$11,000 and his gross monthly salary from PT2 is also approximately \$11,000. For part of 2022, when he worked his regular job and his two part-time jobs, his gross monthly salary was approximately \$32,500. During his background interview, he estimated that his monthly expenses and debt servicing (excluding the SOR debts) was \$4,360. He provides approximately \$600 per month of financial support to his parents. He repaid a \$5,000 loan from his brother. He valued his home, where he accrues monthly rental income, at approximately \$135,000. In May 2023, he purchased another foreign automobile valued at approximately \$67,000. He is current on those monthly payments of \$1,450. He took vacations in 2022 to three different foreign countries. He currently has approximately \$10,000 in savings and \$15,000 in retirement accounts. He has not sought financial counseling. (Tr. 30-35, 52-56, 58, 61, 64; GE 2)

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:

- (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.

Applicant has six delinquent debts that remain unpaid. He also failed to timely file his 2020-2021 federal and state income tax returns. Evidence established that he has the financial means to address his taxes and debts, but he has chosen not to do so. 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:

- (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;
- (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 2020 and 2021 federal and state tax returns. He created his tax problem himself by deciding to listen to advice

from an attorney not to file the returns in order to minimize his potential child support obligations. Even after realizing that was a bad strategy to follow, he has failed to file his tax returns. This was a condition within his control. He produced no evidence that he has made arrangements with the IRS or the state concerning his unfiled tax returns. His reliability, trustworthiness and judgment are called into question. None of the mitigating conditions apply to SOR ¶¶ 1.a and 1.b.

Applicant paid two of the SOR debts and they are resolved in his favor, However, he failed to address the six remaining debts despite having the financial resources to do so. Rather than addressing his debt, he chose instead to buy a \$65,000 automobile and take three foreign vacations in 2022. He failed to present sufficient evidence that he takes his financial obligations seriously. His lack of action toward resolving these debts and choices about how he spends his considerable income, call into question his reliability, trustworthiness, and good judgment. He has not sought financial counseling. None of the mitigating conditions apply to SOR ¶¶ 1.c-1.g and 1.j.

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 or paying his delinquent debts.

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
Subparagraphs 1.a – 1.g and 1.j:	Against Applicant
Subparagraphs 1.h – 1.i:	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