



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



In the matter of:)
)
) ISCR Case No. 23-00232
)
Applicant for Security Clearance)

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

02/28/2024

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations, Guideline J, criminal conduct, and Guideline E, personal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On March 17, 2023, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. On May 16, 2023, the DOD amended the SOR and detailed additional security concerns under Guidelines F, J and E. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

On April 3, 2023, Applicant answered the original SOR, and on June 27, 2023, he answered the amended SOR. He requested a hearing before an administrative judge.

The case was assigned to me on January 9, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 12, 2024, scheduling the hearing for January 29, 2024. I convened the hearing as scheduled. The Government offered exhibits (GE) 1 through 12. There were no objections and GE 1 through 12 were admitted in evidence. The Government requested I take administrative notice of two documents marked as HE I and II. They are copies of state statutes and frequently asked questions from a state court. There was no objection, and I took administrative notice of the documents. Applicant testified and offered Applicant Exhibits (AE) A through E. There were no objections, and they were admitted in evidence. DOHA received the hearing transcript (Tr.) on February 6, 2023.

Procedural Matters

The Government moved to amend the SOR to render it in conformity with the evidence. Specifically, it requested the last sentence of SOR ¶ 1.b be deleted. It stated: "As of the date of this Statement of Reasons, the tax returns remain unfiled." There was no objection, and the motion was granted. (Tr. 9-11)

Findings of Fact

Applicant admitted all the allegations in the original and amended SOR. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 58 years old. He was born in the United States and his family immigrated to another country when he was an infant. In 1977, they immigrated to Canada, and he became a dual citizen. In 1984, he returned to the United States and enlisted in the U.S. military. He was honorably discharged in 1996 in the paygrade E-5. He married in 1991 and divorced in 1998. He has a grown child from the marriage. He remarried in 1998, divorced in 2002, and remarried in 2018. He has no other children. While in the military and for a period of time after his discharge, he held a security clearance, but it is no longer active. He is being sponsored for a clearance by a prospective employer. (Tr. 27, 34-36, 91-93; GE 1)

After Applicant's discharge from the military in 1996, he worked for company CA as a field technician. He was required to travel to other countries as part of his job. He said his job was to bring test equipment and fix problems. There were U.S. State Department travel advisories for some of the countries due to dangers and other risks. He said he was also required to sell CA's equipment to their clients in these countries. He would often receive cash for the sale. He was unaware that his actions may have been circumventing export, customs, and tax laws. He would receive large sums of cash, sometimes as much as \$30,000. He said he did not bring over \$10,000 in cash into the United States. He would travel from wherever he was and go to the company's Paris office and deposit the cash there. (Tr. 50-58, 114; GE 10)

Applicant explained that the amount of travel and other issues were impacting his marriage and he wanted to reduce his travel. At some point CA was not happy with his performance and in September 1999 he was terminated for poor performance. He said during his exit interview that he had certain equipment at his house, such as a pager and cell phone that he was to return. (Tr. 55-58)

In November 1999, Applicant returned to the CA office to retrieve his last paycheck. He was confronted by police and was asked if he knew who Mr. N was. He denied he knew the person. He was asked if he had ever done any business with Mr. N. He denied he did business with him. The Government's evidence includes emails between Applicant and Mr. N. showing that in May 1999, Applicant sold a piece of CA's equipment (spectrum analyzer) on eBay to Mr. N through a rent-to-own agreement. Applicant was still employed by CA when he sold the equipment. Mr. N sent three checks made out to Applicant, totaling \$800. Each check was deposited in Applicant's bank account. Applicant told Mr. N that he purchased the equipment from CA before he was terminated. At some point, Mr. N noticed that there was a sticker on the equipment that identified it as the property of CA. Mr. N contacted CA and it was determined that the property was stolen. The equipment was estimated to be worth about \$20,000. Applicant's car was searched by police, and other equipment was found in his trunk that belonged to CA. His home was also searched, and two other items of equipment owned by CA were found. Two spectrum analyzers and a frequency counter were found in Applicant's possession. (Tr.58-59, 115-118; GE 10)

At his hearing, Applicant could not recall or remember important aspects of the incident and investigation. He testified that he was unaware of the value of the equipment he sold to Mr. N. When questioned further, he admitted it may have been worth between \$5,000 and \$15,000. Although he denied to the police that he knew who Mr. N was, at his hearing, he admitted he had made contact with him, but said he was selling the equipment on eBay at the request of CA. He said it was CA that wanted him to sell the equipment on eBay, and he did not believe he was doing anything wrong. His testimony was not credible. (Tr. 59, 62, 119-122, 135-136)

Applicant was on probation in November 1999 for a driving under the influence (DUI) of alcohol offense when he was arrested and charged with grand theft-embezzlement, a felony, for the property he stole from CA. He said either his wife at the time or her family posted his bond. He could not recall. He thought the bond was about \$20,000. He was released on his own recognizance. He first testified that he was aware he was required to appear for every court date. He then said he was not sure he understood the requirements of the bail and bond. He was uncertain if one of the terms was that he was not to leave the country. He said he figured he could reschedule his court dates by just asking his lawyer to do it for him. He said his intent was not to run away to Canada. He did not have a job and found one in Canada. About a month or two after he was released on bail he moved to Canada. He was still on probation for his DUI when he went to Canada. He could not recall if he had his probation officer's permission to move to Canada. He did not notify his probation officer he was leaving the country. He could not recall if he was to notify the court of a change of address. He did not obtain permission

or notify the court he was moving out of the country. I did not find Applicant credible. (Tr. 62-66, 119-1122)

Applicant was supposed to start his new job in Canada on the same day he was required to be in court in the United States. He testified that he was practically homeless at that time and needed the job. He said he tried to call his attorney to tell him he was taking a job in Canada and said, "he did not pick up the phone for whatever reason." He left the country. His attorney reached out to him and asked where he was when he failed to appear in court on the scheduled date. He stated in his SOR answer that he did not realize that his court appearance for a felony charge was mandatory. He forfeited the bond. He missed his court date and in 2002 was charged in federal court with unlawful flight to avoid prosecution. Applicant testified that he never intentionally tried to run from the law but rather was trying to get home when he left the United States and went to Canada. I did not find his testimony credible. (Tr. 61, 63, 66-70, 78-79; Answer to the SOR; GE 3)

Applicant then explained that he hired a Canadian attorney. He said the state where he was criminally charged would not negotiate with him for his return. He wanted the state to withdraw the unlawful flight charge and failure to appear charge and then he would voluntarily return. He explained that the state knew where he was located. He was concerned that the additional charges of failure to appear and unlawful flight could potentially add three years of prison if he was convicted. He claimed he knew he could beat the grand theft-embezzlement charge, but he was concerned with the other charges. He said the only way to fight the charges was to force the United States to extradite him. He fought extradition, which is why it took six years. In October 2006, he was extradited to the United States from Canada. He testified that U.S. Marshals were required to travel to Canada and escort him to the United States to address his criminal charges. In 2009, he pleaded guilty to the felony grand theft-embezzlement charge and was found guilty. It appears the other charges were dropped. He received a 90-day sentence and all but a couple days were suspended. (Tr. 70-76,79, 80, 122-129)

In 2016, Applicant petitioned the court for his felony grand theft-embezzlement conviction to be expunged. Under the state's law, the charge was reduced to a misdemeanor and then the finding of guilty was changed to a not guilty finding, dismissed, and expunged. Unlike other states the expungement is still a matter of record and can be retrieved. This practice appears to be unique to this state. (Tr. 24, 79-80, 127; GE 4; AE C)

Applicant completed a security clearance application (SCA) in February 2022. Section 22 asked him to disclose any offense not previously disclosed and if he had ever been charged with a felony and if he had ever been charged with an offense involving alcohol or drugs. He responded "no." (GE 1)

Applicant did not disclose his 1999 DUI offense, the felony grand theft-embezzlement charge, fleeing from prosecution, and failure to appear charge. In his SOR answer, he admitted he responded "no" to the question. His explanation was that he lost

concentration when completing the SCA, got distracted, and was busy during that period of his life. His mother's health was deteriorating. He said that he did not deliberately fail to disclose this information. He said he assumed the question asked if these offenses had occurred within the last seven years and the word "EVER" was a complete oversight. Applicant was interviewed by a government investigator in March 2022. He was asked why he failed to disclose his felony grand theft-embezzlement charge and his DUI. He said he thought he was only required to disclose the charges for the past seven years. He then explained the circumstances around his 1998 DUI. (GE 1, 2, 9)

When questioned at his hearing, Applicant explained his failure to disclose his past felony and DUI was a typographical error, and he selected the wrong answer for this part of the SCA. It was also learned through Applicant's testimony that he was charged and convicted for DUI in 1988 in another state. He did not disclose this offense on his SCA. He also did not disclose to the investigator during his March 2022 interview his 1988 DUI. He admitted he was charged, found guilty and received two days in jail. He said he checked his FBI report on his criminal activity and the 1988 DUI was not reported, so he did not disclose it. This offense was not alleged in the SOR or his failure to disclose it on his SCA. I did not find Applicant credible. I find he deliberately failed to disclose the required information as alleged in the SOR on his SCA. (Tr. 80-82, 84-87; GE 1)

Applicant was also asked in his February 2022 SCA if in the past seven years he had failed to timely file or pay his federal, state, or other taxes as required by law. He responded "no." He commented: "I have filed within the past seven years but due to [C]ovid I was unable to file a couple of years." In June 2022, he was contacted by a government investigator to clarify information about filing his tax returns. He admitted he had not filed federal and state income tax returns for tax years 2019, 2020, and 2021. He explained that he expected to get a refund and he did not file because he did not have an accountant to assist him, and the accountant he used in the past was elderly, and he was deterred in using him because of COVID and health reasons. He explained to the investigator that he answered "no" on his SCA by mistake. He also explained that he did not know the amount of taxes he might owe as they had not been completed at that time. He attempted to complete them himself but was unsuccessful and he was consumed with completing his wife's immigration paperwork. He planned to have the delinquent returns filed by July 2022.

Applicant was questioned at his hearing about his failure to timely file his 2018, 2019, 2020, and 2021 tax returns. He explained he did not believe he had to file tax returns because of his low income. He admitted when he was in the military he did not earn much money and had to file his income tax returns. He then said he had many things happening. He was hit by a postal truck, his parents' health was failing, he was experiencing stress due to his wife's immigration status, and his wife had cancer and he was worried about a relapse. When questioned further, he stated his wife had been diagnosed in 2015 and he continued to be worried. He admitted these were all stressors, but they did not prohibit him from filing his tax returns on time. He stated his failure to timely file was not intentional. He further stated that he also believed his taxes were complex because he was receiving IRS form 1099s. Applicant further testified that by

2020 his salary was \$71,000 and it has increased over the years. He and his wife earned approximately \$230,000 in 2023. (Tr. 40-45, 93)

Applicant admitted that he was aware that based on his income in 2020 that he was required to file income tax returns. He had no excuse for failing to file. He said that he hired a tax preparer in 2017 to do his 2018 tax returns, but they did not get completed because of the other stressors going on in his life. Applicant completed government interrogatories in December 2022. IRS tax transcripts reflect that it received Applicant's 2018, 2019, 2020 and 2021 tax returns on January 17, 2023. State documents show that Applicant filed his 2018 through 2021 state tax returns in January 2023. For tax year 2019, he listed his adjusted gross income as \$1 on his federal income tax return. He admitted at his hearing that this was not true information when he filed his tax return. He testified that all of his income taxes are paid. A review of Applicant's tax transcripts shows that taxes owed for certain tax years were paid by his withholdings and the balance was paid by the pandemic tax credits that were applied to the remaining balances. He does not have any outstanding balances on his federal taxes. He said he will never be late filing again. (Tr. 40, 46-49, 101-107; GE 2; AE D)

A review of Applicant state income tax transcripts shows he filed his 2022 return timely. He filed his 2021 state tax return in January 2023 and paid the amount owed when he filed the return. His 2020 tax return was filed in January 2023, and he paid the tax when he filed the return. He filed tax year 2019 state income tax return in January 2023, and he owed \$280, which was not paid at that time. He filed his 2018 state income tax return in January 2023, and he owed \$594, which was not paid at that time. Applicant provided another document from his state that reflects he has zero balances owed for tax years 2019 through 2022. It does not reflect information for tax year 2018. (Tr. 101-107; AE D)

Applicant was asked at his hearing if he owed any other federal or state taxes. He stated he was unaware that he owed any. Documents support that there are two outstanding tax liens from a state where he had lived. A lien filed in 2000 is for \$3,000 and another filed in 2002 is for \$11,000. Applicant said these liens never came up when he retrieved his credit report, and he would take care of them. (Tr. 107-108; GE 8)

Applicant received government interrogatories in November 2022. In them, he disclosed numerous delinquent debts that he had not paid and were not part of payment agreements. He disclosed in the interrogatories that he had paid his 2018 federal income taxes. He signed the interrogatories on December 16, 2022.

Applicant filed Chapter 13 bankruptcy in February 2023. He explained that he knew to obtain a security clearance he would need to show he was resolving his delinquent debts to show he was trustworthy and responsible. He wanted to show he was taking his finances seriously and filing for bankruptcy was the fastest way to show that. He disclosed on his bankruptcy documents that he has approximately \$19,600 of unsecured debts. He pays \$640 a month for his Chapter 13 bankruptcy. He owns a condominium that he valued at approximately \$318,000. It is paid for with no mortgage. He hopes to sell the property

to resolve his debts. He has been busy with other matters so has not had time to sell it, and because the property is in Canada it is more complicated. (Tr. 94-99, 108-113; GE 2, 5, 6,12; AE E)

Applicant explained that he is not proud of his actions, but it was out of character. He said he has no history of criminal activity. He attributed his problems to stressors in his life and his parents' declining health issues. The pandemic impacted his ability to find employment. (Tr. 78, 83)

Applicant provided numerous documents from when he was in the military. They included letters of appreciation, letters of commendations, a list of his medals and ribbons for his service and his performance evaluations. (AE A, B).

I have not considered any derogatory information for disqualifying purposes. However, I may consider it when applying the mitigating conditions, in making a credibility determination and in my whole-person analysis.

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. 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(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." 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 avoided drawing 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. Directive ¶ E3.1.15 states 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 as to obtaining 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 as to 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

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. 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (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;
- (d) deceptive or illegal fraudulent practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing

deceptive loan statements and other intentional financial breaches of trust;
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 taxes as required.

There is substantial evidence to support the application of the above disqualifying conditions. Applicant failed to timely file federal and state income tax returns for tax years 2018 to 2021. He eventually filed them when the security clearance review process started. AG ¶ 19(f) applies.

In November 1999, law enforcement found in Applicant's possession two spectrum analyzers and a frequency counter, all of which belonged to an employer who had terminated him in September 1999. The property was worth thousands of dollars. Prior to his termination, he sold a spectrum analyzer that had been converted from his employer's possession for approximately \$20,000 on eBay. AG ¶ 19(d) applies.

Applicant filed for Chapter 13 bankruptcy in February 2023 because he had numerous delinquent debts, wanted to obtain a security clearance, and became aware his finances may hinder him. AG ¶¶ 19(a), 19(b) and 19(c) apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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;

(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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented

proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; 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 filed for Chapter 13 bankruptcy in February 2023 and has made monthly payments of \$640. He testified his motivation for resolving his debts was because he was applying for a security clearance and was aware that his finances could be a potential issue. Chapter 13 bankruptcy is a legal means of addressing one's burdensome debts. I have considered that Applicant is in compliance with his payment plan under Chapter 13 bankruptcy. The fact that Applicant has a payment agreement and has made payments "does not preclude careful consideration of Applicant's security worthiness based on longstanding prior behavior evidencing irresponsibility." ISCR Case No. 12-05053 (App. Bd. Oct. 30, 2014). AG ¶ 20(d) has some application.

Applicant failed to timely file his 2018 through 2021 federal and state tax returns. In January 2023, he filed them. His motivation for filing was to obtain a security clearance. AG ¶ 20(a) is not established. Applicant's failures to timely file his federal and state income tax returns are recent, numerous, and did not occur under circumstances making recurrence unlikely. He failed to timely file his tax returns for multiple tax years and then eventually did so after the security clearance process began, which demonstrates that he did not act responsibly. AG ¶ 20(g) is established because Applicant's past-due tax returns have been filed.

I did not find Applicant credible during his testimony. His motivation for making financial arrangements through bankruptcy and the eventual filing of his federal and state tax returns was not because it was the right thing to do and it was his legal obligation but was because his negative financial record would impact his ability to obtain a security clearance. He said his parents were in poor health and he had employment issues. These were beyond his control. He failed to show how he acted responsibly when his debts were due, after he regained employment, and why he delayed for years to file his tax returns. AG ¶ 20(b) has minimal application.

Applicant's failure to address his delinquent taxes and debts until after realizing that they were an impediment to obtaining a security clearance "does not reflect the voluntary compliance of rules and regulations expected of someone entrusted with the nation's secrets." ISCR Case No. 14-05794 at 7 (App. Bd. July 7, 2016.)

Applicant converted property worth about \$20,000 that belonged to a former employer at a company where he had worked and been terminated from employment. He sold the property on eBay. He was charged with a felony and pleaded guilty. Applicant boldly misused his position as an employee when he took equipment from his former employer and later sold it. His hearing testimony and denials were unbelievable. He cannot be trusted and has a history to prove it. There is scant evidence of other mitigation.

A security clearance adjudication is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). 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). Although, there is some mitigation, it is insufficient to find Applicant has mitigated the security concerns raised under the financial considerations guideline.

Guideline J: Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 31, and the following is potentially applicable:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

In November 1999, Applicant was on probation for driving under the influence of alcohol, when he was arrested and charged with grand theft-embezzlement, a felony, in state court. He was accused of stealing property from a former employer and selling it on eBay as noted above. It was worth about \$20,000. He had in his possession two spectrum analyzers and a frequency counter taken from his former employer worth about \$20,000. He failed to appear while on bail in connection to the charges above. He was charged in federal court with unlawful flight to avoid prosecution and failure to appear. He left the country and went to Canada where he is a dual citizen. He did not voluntarily return to the United States, but instead in about October 2006, he was extradited to the United States from Canada. He pled guilty to the charge of grand theft-embezzlement. He was sentenced to 90 days in jail. The charge was eventually expunged under state law. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from criminal conduct. The following mitigating conditions under AG ¶ 32 are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant was convicted of grand theft-embezzlement in state court. I have considered it was eventually expunged. Despite being aware when he was released on bail with a \$20,000 bond that he was required to appear in court, he decided to leave the country. I did not find Applicant's explanation believable that he had no other alternative. He did not return to the United States voluntarily. Instead, he blamed the state for not being willing to negotiate with him. It took years to extradite him, and he forced the United States to send U.S. Marshals to Canada to escort him back.

Applicant's criminal conduct is serious. He failed to take responsibility for his conduct. He blamed his employer from whom he stole high-price equipment. He provided little explanation for why he was selling it on eBay other than to say his employer asked him to. When he left the country, he blamed his attorney and then the state because it refused to negotiate with him to reduce or withdraw charges. He forced the United States to extradite him instead of returning voluntarily. The predicament he found himself in, being charged with flight, was one he created and then attempted to use to negotiate his return. The offense of grand theft-embezzlement is a crime of moral turpitude because Applicant was placed in a position of trust, and he violated the trust of his employer. Although, Applicant's criminal conduct occurred years ago, he has not taken full responsibility for it and there is insufficient evidence of successful rehabilitation. His testimony was repeatedly not believable. I cannot find that future criminal conduct is unlikely to recur. Applicant's conduct casts doubt on his trustworthiness, reliability, and good judgment. I find the above mitigating conditions do not apply.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect

classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

Applicant deliberately failed to disclose on his February 2022 SCA his DUI and grand theft-embezzlement, and failure to appear charges as was required. I did not find his explanations credible regarding these matters. AG ¶ 16(a) applies.

Applicant's bankruptcy and failure to file both federal and state income tax returns for multiple years (SOR ¶¶ 1.a through 1.d) as alleged under Guideline F, and his criminal conduct as alleged under Guideline J (SOR ¶¶ 2.a and 2.b), were cross-alleged under the personal conduct guideline. The adverse conduct in these allegations is adequately covered under both Guidelines F and J. AG ¶¶ 16(c) and 16(d) do not apply.

The following mitigating conditions under AG ¶ 17 are potentially applicable to the disqualifying security concerns based on the facts:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant's deliberate failure to disclose his felony charges for grand theft-embezzlement, failure to appear, and his alcohol-related charge of DUI are not minor offenses. His multitude of explanations to the government investigator and at his hearing only exacerbated the concern. The security clearance process relies on those seeking a clearance to be honest and forthcoming. Applicant failed to do so, which casts doubt on his reliability, trustworthiness, and good judgment. The above mitigating conditions do not apply.

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 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 Guidelines F, J, and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those Guidelines, but some warrant additional comment.

I considered Applicant's military service and numerous awards and certificates and performance appraisals. Applicant failed to timely file his federal and state income tax returns from 2018 to 2021. Motivated by the security clearance process he filed them in January 2023.

The DOHA Appeal Board has held that:

Someone 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. August 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).¹

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, Guideline J, criminal conduct, and Guideline E, personal conduct.

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.d:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge

¹ ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).