



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



In the matter of:)	
)	
)	ISCR Case No. 19-03693
)	
Applicant for Security Clearance)	

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: Todd Hull, Esq.

06/02/2023

Decision

HYAMS, Ross D., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns arising from his unfiled tax returns and delinquent debts. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 3, 2019. On March 26, 2021, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant answered the SOR on February 11, 2022, and requested a hearing before an administrative judge. The case was assigned to me on November 17, 2022.

The hearing was convened by video teleconference on January 24, 2023. Department Counsel submitted Government Exhibits (GE) 1-8. GE 1-4 and 8 were admitted without objection. Applicant objected to GE 5-7. These exhibits were tax liens for a person with a similar name to Applicant. He claimed that the liens were not his, and the documents did not provide other identifying information. Department Counsel was given a week to provide verifying information. That information was not provided, and GE 5-7 were not admitted in evidence. (Tr. 15-17)

Applicant submitted Applicant's Exhibits (AE) A-I, which were admitted in evidence without objection. After the hearing, I held the record open for two weeks to provide him the opportunity to submit additional documentary evidence. He timely submitted documents that I marked as AE J and K and admitted in evidence without objection.

Amendment to the SOR

During the hearing, Applicant testified that he had not timely filed his 2018 and 2019 federal and state income tax returns. Department Counsel moved to amend the SOR to add tax years 2018 and 2019 to SOR ¶¶ 1.a and 1.b.

Applicant objected to the amendment because he claimed that the SOR could have been amended prior to the hearing. I overruled his objection and granted the motion to amend the SOR. Applicant admitted the amended allegations and was given the opportunity to provide additional documentary evidence and explanation after the hearing concluded. (Tr. 50-52, 76-77)

Findings of Fact

In his answer, Applicant admitted SOR ¶¶ 1.a and 1.b and denied SOR ¶¶ 1.c - 1.n. He asserted that the debts alleged in 1.c and 1.d had been resolved, and that the debts alleged in 1.e-1.n were no longer delinquent. His admissions are incorporated into my findings of fact. Based on my review of the pleadings, evidence submitted, and testimony, I make the following additional findings of fact:

Applicant is 38 years old. He was married in 2008. He has two minor children and two adult children. He earned a bachelor's degree in 2006, and a master's degree in 2010. He owns an information technology company as a sole proprietor and does contract work for a government contractor. He started this business in 2010. He received his first security clearance in 2007. (Tr. 22-26; GE 1)

The SOR alleges failure to file seven years of federal and state income tax returns, two delinquent credit card debts, and ten past-due student loans. The status of the allegations is as follows:

SOR ¶¶ 1.a and 1.b are failure to file federal and state income tax returns for tax years 2013-2019. Applicant admitted these allegations. He stated that starting in 2013, he was irresponsible and failed to maintain a record of his business expenditures. He asserted that he requires this information to file his tax returns, because it will reduce his tax liability. During this time, he was a subcontractor, and no taxes or deductions were taken out of payments made to him by the prime contractor. Applicant has not paid any federal or state income taxes for tax years 2013-2019. He was told that he was required to make quarterly tax payments by his CPA but failed to do so. He claims that he will file income tax returns for tax years 2013-2019 sometime in 2023, after he collects the necessary business expense information for his accountant. These tax issues are unresolved. (Tr. 27-35, 77-102; GE 1; AE C, H)

Applicant claimed that he filed his tax year 2020 and 2021 income tax returns. He provided two unsigned and undated federal income tax returns showing that he owed \$36,606 and \$30,728 for these years, respectively. He did not submit any documentary evidence regarding his state income tax returns for these years. During the hearing we discussed the insufficiency of the evidence provided, but he did not provide sufficient documentation after the hearing showing that these returns had been filed or that any payments have been made to the IRS or the state. (Tr. 27-35, 77-102; AE D)

SOR ¶ 1.c is a credit card account placed for collection for \$7,750. This debt was subsequently charged off. Applicant claimed that he had the bill for this account paid monthly on autopay. He stated that he did not open the statements when he received them. He claimed that at some point autopay stopped working and the creditor closed the account for non-payment without his knowledge. He claimed that this debt has been paid, but he did not provide sufficient documentation supporting that assertion. He did provide a one-page document showing that he made monthly payments from November 2017 to March 2020, but it does not show the amounts paid or that there is a zero balance. This debt is unresolved. (Tr. 35-38, 105-108; GE 2; AE K)

SOR ¶ 1.d is a credit card account that has been charged off for \$222. Applicant claimed that he stopped using this credit card, but he was still charged an annual fee. Since he did not look at the statements, the fee was unpaid and the account was charged off. He claimed that this debt has been paid, but he did not provide sufficient documentation showing that it is resolved. (Tr. 38-40, 102-105; GE 2, 3, 4; AE E)

SOR ¶¶ 1.e-1.n are past-due student loan accounts totaling \$98,128. Applicant stated that these accounts are from his undergraduate and graduate education. He claimed that he was behind on payments from about July 2017 to about May 2019 because his pay was delayed about three months after he started a new contract. He claimed that after about three months, he resumed his regular monthly payment, and caught up on his payments in about May 2019. He did not contact the lender to resolve the issue. He claimed that the loans were put into the COVID-19 forbearance program after March 2020. (Tr. 40-42, 97-102, 114; GE 2, 3)

Post hearing, Applicant submitted a document showing his record of student-loan payments. It shows that he started repayment in April 2013 and made monthly payments until January 2017. In 2017, he missed payments for four non-consecutive months. In 2018, he missed payments for five non-consecutive months. In 2019, he missed payments for three non-consecutive months and the loans were listed as 120 days or greater past due on his credit report from that year. His last payment was in March 2020. His February 2022 credit report shows the loans as current because they are in the forbearance program. (GE 3; AE J)

Applicant did not provide documentation of his current finances, to include his monthly income or expenses, or his savings. When questioned about these matters at the hearing, he was evasive in answering some questions, and failed to provide requested documentation to substantiate his claims. He reported his gross income is about \$250,000 yearly, and that his wife earns about \$12,000 yearly. He was asked to provide

an estimate of his monthly expenses, and he estimated between \$8,000-\$10,000 monthly. He was unable to explain what he did with the remaining \$130,000+ of yearly income. He and his wife each drive a Tesla, and their monthly payments total about \$2000 for both cars. Two of his children have cars from 2015 that he purchased for them. Every month, he puts money into his investments, in varying amounts. He reported taking three significant vacations in the last four years, including Europe in 2018, Mexico in 2020, and the Caribbean in 2021. He and his wife own a home that they bought in 2014, which he asserts is now valued at almost \$900,000. He is also an investor in a home which he claims is valued at over \$400,000. He has not had credit counseling. (Tr. 52-77; 116-118; GE 1; AE F)

Applicant submitted a professional character letter which stated that he is a skilled, reliable, and professional worker. He submitted a personal character letter in which the writer stated that he was unaware that Applicant had any financial concerns or difficulties. (AE G, I)

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 security concern 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 guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (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.

The SOR allegations are established by the Applicant’s admissions and the record evidence. AG ¶¶ 19(a), 19(c), and 19(f) apply.

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

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) does not apply. Applicant failed to provide sufficient documentation showing that his tax issues or delinquent credit card debts are resolved, or that any of alleged SOR debts became delinquent under such circumstances that are unlikely to recur. His failure to make consistent student loan payments is recent, and his failure to resolve his delinquent debts and timely file his income tax returns is long-term, ongoing, and unresolved. This continues to cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) does not apply. There is insufficient evidence to show that Applicant's financial problems occurred under circumstances beyond his control, and that he acted responsibly under the circumstances.

AG ¶ 20(d) does not apply. Although his student loans were apparently placed in the COVID-19 forbearance program after March 2020, he did not have a consistent record of payments for about three years prior to the COVID pause, and he did not provide an adequate explanation about why his student loans accounts remained delinquent for so long. Applicant provided insufficient documentary evidence to support his claims that he made payments to bring his delinquent student loans to current status in 2019.

AG ¶ 20(g) does not apply. The record shows that Applicant has not met his tax filing obligations since 2012. He admits failing to file federal and state income tax returns for tax years 2013-2019 and provided insufficient evidence that he filed income tax returns for tax years 2020 and 2021. He has also testified that the prime contractor did not withhold federal or state income taxes from payments made to him as a subcontractor during this time period. Further, the record does not include sufficient evidence that he has paid federal or state income taxes since at least 2012.

Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as paying taxes when due, 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. 17-01382 at 4 (App. Bd. May 16, 2018).

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 considered his character letters. I have incorporated my comments under Guideline F in my whole-person analysis.

I have considered Applicant's long-standing and ongoing failure to file required federal and state income tax returns, and his apparent failure to pay federal and state income taxes due. I have also considered that he and his wife drive luxury cars, take expensive vacations, and that he continues to fund his investment accounts, while ignoring basic legal obligations with regard to his income taxes.

Overall, the record evidence leaves me with questions and serious doubts about Applicant's eligibility and suitability for a security clearance. Applicant failed to mitigate the security concerns under Guideline F.

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**

Subparagraph 1.a- 1.n: Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Ross D. Hyams
Administrative Judge