



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



In the matter of:)
)
) ISCR Case No. 23-01205
)
Applicant for Security Clearance)

Appearances

For Government: Nicole Smith, Esq., Department Counsel
For Applicant: *Pro se*

06/28/2024

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On July 28, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant responded to the SOR on August 25, 2023 (Answer), and he requested a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on January 19, 2024. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on February 9, 2024, and he was required to respond by March 10, 2024. He did not submit a response. The case was assigned to me on May 3, 2024. The Government exhibits included in the FORM are admitted in evidence without objection.

Findings of Fact

Applicant admitted all the SOR allegations in his Answer. He is 39 years old, married, and he has two children, ages 14 and 12. He obtained his general education diploma in 2004. As of his December 2021 security clearance application (SCA), he attended college since September 2013 but had not yet earned a degree. Since April 2011, he has worked as a foreman for his employer, a defense contractor. He previously worked for the same company from August 2005 to January 2006. He was first granted a security clearance in 2013. (Items 1-4)

The SOR alleges Applicant failed, as required, to timely file his federal and state income tax returns for tax years (TY) 2017-2021 (SOR ¶¶ 1.a, 1.c); owes federal income taxes of approximately \$28,803 (SOR ¶ 1.b); owes state income taxes of approximately \$4,127 (SOR ¶ 1.d); owes \$28,304 in delinquent consumer debt (SOR ¶¶ 1.e-1.h); and owes a \$90 delinquent medical debt (SOR ¶ 1.i). The allegations are established by Applicant's admissions in his Answer, December 2021 SCA, March 2022 background interview, July 2022 Internal Revenue Service (IRS) tax account transcripts, a January 2023 credit bureau report (CBR), and his June 2023 response to interrogatories. (Items 1-5)

Applicant discussed his failure to timely file his relevant income tax returns and pay his taxes in his SCA:

Upon working through the 2017 tax worksheet, my wife and I discovered that we would owe for that year. At the time, we were unable to pay the amount owed up front and decided to file later in the year when we would be able to be on an installment plan. I was under the assumption that my wife had filed the taxes later that year however, during recent conversations about finances in order to prepare for my clearance renewal, I was made aware that our taxes had in fact not been filed for 2017 or subsequent years (2017-2019).

Once I was made aware that our income taxes had not been filed for 2017-2019, my wife and I sat down and completed the tax worksheets for those years. In addition, installment plans were requested for the amounts owed. These worksheets, along with all additionally required documentation were sent to the IRS via certified mail on 12/17/21. 2020 taxes were filed as well via certified mail however they were filed past the tax day deadline. These taxes are not yet satisfied as we are waiting on the IRS to process the returns and respond to the installment plan request. We have also made adjustments to our withholdings to prevent owing in the future. Previously, we each claimed two for our two children but have reduced that down to one each. We have also worked vigorously on our budget moving forward so that the installment plan can be easily accommodated. (Item 3)

Applicant further indicated in his response to interrogatories that he filed his federal income tax returns for TYs 2017 to 2020 in December 2021 and for TYs 2021 and 2022

in June 2023, and he owed approximately \$28,803 in federal taxes for TYs 2017 to 2023. He also indicated he had not filed his state income tax return for TY 2017, but he was due a \$166 state refund; he filed his state income tax returns for TY 2018 to 2022 in June 2023; he owed approximately \$4,127 in state taxes for TY 2018 to 2020; and he was due state refunds of \$107 and \$456 for TYs 2021 and 2022. (Item 4)

July 2022 IRS tax account transcripts reflect that Applicant filed his federal income tax returns for TYs 2017 to 2018 in May 2022; he filed a federal tax return for TY 2019 in June 2020; he had a zero balance for TYs 2018 and 2020, but no federal income tax return for TY 2020 had yet been filed; and he owed federal taxes in the amounts of \$5,641 for TY 2017 and \$14,034 for TY 2019. Applicant indicated during his background interview that he was awaiting a response from the IRS and the state tax authority concerning a monthly payment plan to resolve his outstanding federal and state taxes. He intends to abide by the plans and resolve his outstanding taxes upon receipt of a response from the IRS and state tax authority. He failed to provide any further documentation. (Item 4)

Applicant attributed his consumer debt to financial hardship. He also acknowledged during his background interview that he and his spouse lived above their financial means. After voluntarily surrendering his car in November 2019 to ease his financial strain, he incurred the debt in SOR ¶ 1.e for the remaining balance due on his auto loan. After he and his family relocated to a different city in March 2020, he incurred a \$5,150 debt for vacating their rental property before the conclusion of their lease, which he paid in February 2021. He was disputing the accuracy of the credit card debt in SOR ¶ 1.g. He contacted the creditor for SOR ¶ 1.h in December 2021 and negotiated and began paying \$50 monthly to resolve this debt by September 2023. He was unaware of the medical debt in SOR ¶ 1.i, but he intended to contact the creditor to resolve it. He was working to settle and pay his delinquent debts, to include SOR ¶¶ 1.e, 1.h, and 1.i. He did not provide documentation to corroborate his claims of payment or dispute toward his SOR consumer debts. (Items 3-4)

Applicant indicated during his background interview that his household net monthly income was \$10,642. After paying their monthly expenses, he indicated that their household net remainder was \$1,110. He has \$8,000 in a retirement savings account. He indicated he is working on resolving his financial obligations and he intends to do so. There is no evidence in the record that he has received financial counseling. (Item 4)

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:

(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 did not timely file his federal and state income tax returns for TYs 2017 through 2021. He owes approximately \$28,803 in past-due federal income taxes and approximately \$4,127 in past-due state income taxes. He also owes approximately \$28,304 in delinquent consumer debt and a \$90 delinquent medical debt. The above disqualifying conditions are applicable.

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;

(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; and

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

While conditions beyond Applicant's control contributed to his financial problems, he must show that he acted responsibly under his circumstances. He filed his federal income tax return for TY 2019 in June 2020 and for TYs 2017 to 2018 in May 2022, before the SOR was issued. As such, I find SOR ¶ 1.a, in part, for Applicant as to these tax years.

However, Applicant did not provide documentation to corroborate his claims that he filed his federal income tax returns for TYs 2020 and 2021 or his state income tax returns for TYs 2017 to 2021. He also failed to provide documentation regarding his efforts to negotiate a payment plan with the IRS and the state tax authority for his outstanding federal and state taxes, or of his efforts to resolve or dispute any of his consumer debts. There is also no evidence that he has received financial counseling. There is insufficient evidence for a determination that his tax problems will be resolved within a reasonable period, and I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his outstanding taxes. His financial issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and judgment. None of the mitigating conditions are sufficiently applicable to mitigate the remaining security concerns.

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. 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." I am obligated to follow that directive.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

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:	Against Applicant (except for tax years 2017-2019, which I find For Applicant)
Subparagraphs 1.b-1.i:	Against Applicant

Conclusion

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.

Candace Le'i Garcia
Administrative Judge