



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



In the matter of:)	
)	
)	ISCR Case No. 23-01539
)	
Applicant for Security Clearance)	

Appearances

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

06/27/2024

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 August 25, 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 November 7, 2023 (Answer), and requested a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on January 10, 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 January 31, 2024, and he was required to respond by March 1, 2024. He did not submit a response. The case was assigned to me on April 1, 2024. The Government exhibits included in the FORM are admitted in evidence without objection.

Amendment to the SOR

In its FORM, the Government amended the SOR to add an allegation numbered SOR ¶ 1.I under Guideline F. Applicant did not submit a response to the FORM and did not admit or deny SOR ¶ 1.I. As such, I am construing Applicant's silence as a denial of SOR ¶ 1.I.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a-1.k in his Answer. He is 43 years old. He is unmarried and he has lived with his girlfriend since February 2020 in the home she owns. He has two children, ages 17 and 3. He graduated from high school in 1998. He previously worked for a non-defense contractor from June 2011 to August 2021, with a period of unemployment from April 2020 to June 2020 due to the COVID-19 pandemic. He also worked as a part-time delivery driver from May 2020 to December 2020. Since August 2021, he has worked as a technician for his employer, a defense contractor. He has never held a security clearance. (Items 3, 6)

The SOR alleges Applicant failed to file his federal and state income tax returns for tax years (TY) 2015 through 2021 (SOR ¶¶ 1.a-1.d); owes federal income taxes of approximately \$19,470 for TY 2016 through 2020 (SOR ¶ 1.e); and owes state income taxes of approximately \$22,186, for which state tax liens were entered against him in the amounts of \$9,188 in November 2018, \$3,530, \$3,444, \$2,993, and \$894 in April 2022, and \$2,137 in November 2023 (SOR ¶¶ 1.f, 1.h-1.i). It also alleged that he satisfied, in December 2020, a \$4,481 state tax lien entered against him in February 2020. The allegations are established by Applicant's admissions in his Answer, October 2022 security clearance application (SCA), March 2023 response to interrogatories, Internal Revenue Service (IRS) records, court records, and his December 2022 background interview. (Items 1-6)

Applicant attributes his tax debt to minimal income. He stated in his SCA he utilized his income to pay for living expenses and he was consequently unable to pay his taxes. He also stated he was able to begin resolving his tax issues when he received a better paying job. IRS tax account transcripts from March 2023 reflect he filed his federal income tax returns for TY 2018 in April 2021, TY 2019 and 2020 in August 2022, and TY 2016 and 2017 in September 2022, but he had not yet filed for TY 2015 and 2021. He paid the \$894 state tax lien in November 2023. He provided documentation reflecting payments of \$150 monthly to the state tax authority from May 2021 to December 2022. He indicated that he retained a tax relief service in late 2021 to resolve his federal tax issues. He provided documentation reflecting he has paid the tax relief service \$8,270, but he failed to provide any further documentation. (Items 3-4, 6)

Applicant characterized his financial situation during his background interview as improving. He indicated he is willing to resolve his financial obligations. He and his girlfriend split the mortgage payments. There is no evidence in the record that he has received financial counseling. (Items 3, 6)

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 TY 2015 through 2021. He owes approximately \$19,470 in federal income taxes for TY 2016 through 2020 and approximately \$22,000 in state income taxes. 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 and state income tax returns for tax years 2016 through 2020 in April 2021, August 2022, and September 2022. He provided documentation reflecting payments of \$150 monthly to the state tax authority from May 2021 to December 2022, and he paid the \$4,481 and \$894 state tax liens. He is resolving his outstanding state taxes. As such, I find SOR ¶¶ 1.c-1.d and 1.f-1.l for Applicant.

Applicant has not yet filed his federal and state income tax returns for TY 2015 and 2021. While he retained a tax relief service in late 2021 to resolve his outstanding federal tax issues and paid the service \$8,270, he failed to provide any further documentation. There is also no evidence that he has received financial counseling. There is insufficient evidence for a determination that his federal tax problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to file his federal and state income tax returns for tax years 2015 and 2021 and pay his federal 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 security concerns in SOR ¶¶ 1.a-1.b and 1.e.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially

disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. 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 in SOR ¶¶ 1.a-1.b and 1.e.

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.b:	Against Applicant
Subparagraphs 1.c-1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraphs 1.f-1.l:	For 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