



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



In the matter of:)	
)	
)	ISCR Case No. 23-00254
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

07/17/2024

Decision

BENSON, Pamela C., Administrative Judge:

Despite Applicant’s awareness of his obligations to file tax returns and pay his tax liability, he did not file the returns or make tax payments for several years. Notwithstanding his recent filings, he did not establish that he acted responsibly to address his tax problems. Given the entirety of the record evidence, I conclude that Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 22, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The CAS acted 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 implemented by the DOD on June 8, 2017.

On March 8, 2023, Applicant responded to the SOR (Answer). He denied both SOR allegations, and he attached documentary evidence. He originally requested a

decision on the administrative (written) record, but he later changed his mind and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge.

I was assigned this case on February 23, 2024. DOHA issued a notice on April 15, 2024, scheduling the hearing for May 8, 2024. On May 6, 2024, I notified all parties that I would have to reschedule this hearing, and all parties agreed to reschedule the hearing for May 13, 2024. The hearing proceeded as scheduled via online video-teleconferencing. Department Counsel submitted Government Exhibits (GE) 1 through 3, which I admitted without objection. Applicant testified and submitted six exhibits, which I admitted as Applicant Exhibits (AE) A through F without objection. Upon Applicant's request, I kept the record open until May 28, 2024, to provide him the opportunity to supplement the evidentiary record. He timely submitted three state income tax returns, which I admitted as AE G without objection. DOHA received the hearing transcript (Tr.) on May 20, 2024. The record closed on May 28, 2024.

Findings of Fact

Applicant is 58 years old. From 1989 to 1995, he served on active duty in the U.S. Air Force, from which he received an honorable discharge at the rank of E-4. He earned a bachelor's degree in 2003. In 1989, he married and in 1995 he was divorced. He married again in 1996. His second wife works by managing their two rental properties. Applicant has three adult children and an adult stepson. Since March 2022, he has been employed as a database administrator for a DOD contractor. (GE 1; Tr. 19-20)

Applicant stated that he has always had the responsibility for filing the household income tax returns with the use of computer tax software, but recently his wife became involved by organizing the rental expenses. In his Answer, he stated that his tax problems developed during his February 2019 to November 2021 employment with a company providing medical equipment, such as respirators, hospital beds, and oxygen, which became chaotic during the pandemic. His employer required him to work numerous hours and be on call 24 hours a day, to include while he was on vacation. The time requirements enforced by his employer left him little time to prepare and file his 2019, 2020 (and 2021) federal income tax returns, (SOR ¶ 1.a.), as well as his state income tax returns for the same tax years. (SOR ¶ 1.b.) He said, "considering the things that were going on in my life from 2019 to '21, it just -- it wasn't -- it was a priority to pay, less of a priority to get it filed, because I felt like I would get it done at any time." He left this employment in November 2021, and he remained unemployed until March 2022. Department Counsel asked Applicant why he did not use that time to file his 2019 and 2020 income tax returns, and he said that he most likely needed that time to recover from his demanding and stressful job. (Answer; Tr. 21, 28-30, 47-51; AE D)

Applicant disclosed on his Electronic Questionnaire for Investigations Processing (e-QIP), submitted in March 2022, that he had not yet filed his 2020 and 2021 federal income tax returns. He listed that he planned to file these income tax returns by the April 15, 2022 deadline. He did not file these tax returns in April 2022, as promised, and he did

not disclose on the e-QIP his failure to file his 2019 federal income tax return, or that he had also failed to file the respective state income tax returns. His new employer required him to become certified in cyber security, which was a difficult and time-consuming process, and time got away from him. He also did not think it was very important because he believed he did not owe any taxes, which ultimately was a wrong assumption. (GE 1; Tr. 30-32, 37-38)

In September 2022, Applicant participated in a background interview with an authorized DOD investigator. When questioned about his unfiled 2020 and 2021 tax returns, Applicant stated that he was delayed from filing these tax returns due to lost expense records from his two rental properties. He told the investigator that he would have these tax returns filed by November 2022. (GE 2; Answer)

On February 3, 2023, another DOHA Department Counsel contacted Applicant via e-mail to request he provide copies of his 2016-2021 federal tax transcripts. On February 15, 2023, Applicant provided copies of his Internal Revenue Service (IRS) transcripts for tax years (TY) 2018-2021. His 2018 tax transcript was the only record that reflected he had filed a tax return in October 2019. Applicant stated, "I will complete all required actions by close of business Friday." He also reported that he thought he had filed his 2019 federal income tax return more than a year earlier, but it looked like it was not properly processed through the tax software. (GE 3)

Applicant provided updated IRS tax records. His 2019 federal tax return was received by the IRS on March 14, 2023, and processed on May 1, 2023. There is a zero-balance reflected on this record. His 2020 federal income tax return was received by the IRS on February 27, 2023, and processed on April 3, 2023. He made payments totaling \$2,905 and the account balance is zero. His 2021 federal income tax return was received by the IRS on March 22, 2023, and processed on May 22, 2023. After he made payments totaling \$5,923, his account balance is zero. The tax record for tax year 2022 showed that Applicant filed this return late, since it was received by the IRS on May 31, 2023, and was processed on June 26, 2023. The account balance is zero. He requested an extension from the IRS to file his 2023 income tax return in October 2024. Applicant admitted that he was motivated to finally get the income tax returns filed by "DOHA and his wife." The upcoming DOHA hearing was part of the reason he was inspired to file his tax returns, but he also just wanted to get this problem resolved so that it was no longer weighing on him. (AE C-1, C-2, C-3, C-4, C-7; Tr. 32-35, 39)

Prior to the hearing, Applicant provided documentation of his state tax return status, but he did not provide information when the 2019, 2020, and 2021 state income tax returns were actually filed. After the hearing, he submitted state tax documents that reflected that his 2019, 2020, and 2021 state income tax returns were all filed on February 24, 2023. He was issued refunds for all three tax years. (AE G; Tr. 33-34, 40-41)

Although not alleged in the SOR, Applicant owes the IRS \$8,234 in back taxes, interest, and penalties for TY 2012. According to the payment details in the record, this amount is to be paid by November 1, 2024. He said that he is going to try one more time

to challenge the IRS about owing this full amount, which stemmed from his brief unemployment period in 2012, taking out a 401(k) loan, and also keeping some of the funds from this account before he rolled-over his 401(k) to his new employer. He received two 1099s for the 2012 tax year, but when he filed the 2012 tax return, he only attached one 1099. When he discovered that he owed back taxes, penalties and interest, he appeared before the U.S. Tax Court in 2016 to challenge it. The court ruled that Applicant had a deficiency in income tax due for 2012 in the amount of \$23,091. Applicant was unsatisfied with this ruling, and instead of making payments, he opted to have his tax refunds be intercepted every year to satisfy this tax debt. He testified that after he challenges the U.S. Tax Court’s ruling for a second time in the near future, and if he is found liable in the amount of \$8,234, he will then make monthly payments of \$500 until the tax debt is satisfied. He presently has no intent to pay his delinquent taxes for TY 2012. (AE C-5, C-6, C-7, C-8, C-10; Tr. 22-27, 35-37, 41-46)

Tax Year	Return Filed	Balance	Payments
2012 Federal	4/01/2013 Timely	\$8,234 (due 11/01/2024)	From tax refund interceptions. If he is found liable for this amount by the US Tax Ct, he will begin to make monthly payments of \$500.
2019 Federal	5/01/2023 Untimely	\$0	
2019 State	2/24/2023 Untimely	\$0	
2020 Federal	4/03/2023 Untimely	\$0	
2020 State	2/24/2023 Untimely	\$0	
2021 Federal	5/22/2023 Untimely	\$0	
2021 State	2/24/2023 Untimely	\$0	
2022 Federal	6/26/2023 Untimely	\$0	
2023	Extension until 10/2024		

(AE C-1 through C-10, AE G; Answer)

Applicant provided a character-reference letter from a former co-worker during their employment with the medical equipment provider from 2019 to 2021. This co-worker stated that he too was overworked by their employer, and that his sleep schedule was “basically non-existent.” He experienced panic attacks and tightness in his chest on a regular basis. The stress in the work environment became too much and he also left this

employment, despite not having another job waiting for him, just so he could recover his mental and physical health. (AE A)

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 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. . . .

Conditions that may raise financial considerations security concerns are provided under AG ¶ 19. The following one is potentially applicable in this case:

(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 alleges and the Government established Applicant failed to timely file his federal and state income tax returns for TY 2019, 2020, and 2021. AG ¶ 19(f) applies.

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

(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 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.

Applicant did not timely file his federal and state income tax returns for TY 2019, 2020, and 2021. He attributed his tax issues to his period of employment with a medical equipment provider during the COVID-19 pandemic and the numerous hours required by his employer. He admitted that he was aware he was required to file annual federal and state tax returns; however, he took no steps to file the unfiled returns for multiple years, or during the time he was unemployed for about four or five months following his departure from this employer in November 2021. He had promised in his March 2022 e-QIP that he would file these tax returns by April 15, 2022. He then promised during his September 2022 background interview that he would file his tax returns in November 2022. He failed to fulfill his promises on both occasions. It was not until a DOHA Department Counsel requested his tax transcripts in February 2023 that finally motivated Applicant to file his income tax returns between February and May 2023. The SOR was issued on February 22, 2023. AG ¶ 20(g) is applicable, but that does not end the discussion. The timing of his filings undermines the “good faith” requirement under consideration in this case.

Although not alleged in the SOR, Applicant filed his 2022 federal (and presumably state) income tax returns untimely as well. Applicant currently owes \$8,234 for TY 2012, and he testified at the hearing that he plans to challenge, in the near future and for a second time, the amount of 2012 income taxes that was determined he owed. Applicant has had many years following his 2016 U.S. Tax Court ruling to challenge the decision, but based on the facts, I find he clearly has a history of procrastination. Applicant’s delay in addressing these delinquent taxes undercuts evidence that he has acted in a financially responsible manner. Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes. However, it may be considered in the application of mitigating conditions, in making a credibility determination, and in a whole-person analysis.

Applicant claimed that he initially believed that he was not required to timely file his tax returns if he expected a tax refund; however, he provided no plausible basis for his belief that he was due a refund when the evidence showed he owed taxes for federal TYs 2020 and 2021. The March 2022 e-QIP put Applicant on notice that his unfiled tax returns were a security concern, however he did not consult any tax preparers to assist him with his filings. Notwithstanding Applicant’s recent tax filings, he did not establish that he acted responsibly and in good faith to address and resolve his unfiled tax returns. He did not mitigate the financial considerations 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 and the factors in AG ¶ 2(d) in this whole-person analysis.

I considered Applicant's military service, and his otherwise favorable financial history with his creditors. I also recognize that he was working in a stressful work environment during the pandemic, which impacted his ability to file his tax returns timely. By the time he completed the e-QIP in March 2022, however, he was aware that his unfiled tax returns were a security concern and he failed to make them a priority. He did not address his tax issues until February 2023, after a DOHA Department Counsel requested copies of his tax transcripts.

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 73, 183 D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. Notwithstanding his recent filings, he did not establish that he acted responsibly to address his tax problems. For all these reasons, I conclude that 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
Subparagraphs 1.a. and 1.b.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge