



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



In the matter of:)	
)	
)	ISCR Case No. 23-02528
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

07/24/2024

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On March 1, 2023, Applicant submitted a security clearance application (e-QIP). On January 5, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective within the DoD after June 8, 2017.

Applicant answered the SOR on a January 26, 2024, and requested a hearing before an administrative judge. The case was assigned to me on April 17, 2024. The Defense Office of Hearings and Appeals issued a notice of hearing on April 22, 2024, and the hearing was convened as scheduled on June 12, 2024. The Government

offered seven exhibits, referred to as Government Exhibits 1 through 7, which were admitted without objection. The Applicant offered two exhibits, referred to as Applicant's Exhibits A and B, which were admitted without objection. Applicant also testified on his own behalf. The record was left open until close of business on June 26, 2024, to allow him to provide additional supporting documentation. No additional documentation was submitted. DOHA received the transcript of the hearing (Tr.) on June 24, 2024.

Findings of Fact

Applicant is 39 years old. He is married with no children. He has a high school diploma and several Certifications, including a Computer Business Specialist Certification. He holds the position of Help Desk Specialist. He is seeking to obtain a security clearance in connection with his employment.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information.

The SOR identified five allegations consisting of delinquent back taxes and consumer debt totaling in excess of \$24,000. He also failed to file his Federal income tax returns for 2019, 2020 and 2021; and his state income tax returns for 2019, 2020, 2021, and 2022. Applicant admits each of the allegations with explanations, except 1.e., which he claims he has settled. Credit reports of the Applicant dated September 25, 2023; March 24, 2023; and April 5, 2024, confirm that he is indebted to each of the creditors listed in the SOR. (Government Exhibits 4, 5, and 6.)

From 2014 through 2022, Applicant worked for a company where he did tech support. During that eight-year period, he earned about \$2,400 a month. As time passed, things became more expensive. He was struggling to pay his bills and he began to experience financial problems.

Applicant began working for a defense contractor in February 2023. He earns about \$4,000 a month. His wife is unemployed but is looking for work. Applicant stated that he is now able to pay his bills and meet his regular monthly expenses with between \$400 to \$500 dollars left over. This is his first time working for the Federal Government, and his first time applying for a security clearance.

Applicant explained that he lived with his mother in her house until he was 29 years old. (Tr. p. 54.) During this time, his mother filed his income tax returns for him. After moving out of her house, the responsibility to file his tax returns fell on him. He stated that he had been filing Federal income tax returns, and he did not know that he had to file separate state tax returns. (Tr. p. 39.) In 2015 and 2016, he used the

Turbotax computer program to prepare his income tax returns and filed them on-line. At some point, due to procrastination and other distractions, he stopped filing his returns.

He stated that things came up like COVID 19, family issues, and personal matters that distracted him from filing his annual Federal and state income tax returns for tax years 2020 and 2021. It was not until he applied for his current job that he learned he needed to clear up his delinquent debt. Since then, he has been working toward getting his income tax returns filed, his taxes paid, and his delinquent debts resolved.

The following delinquent tax returns, tax debt, and consumer debts are of security concern:

1.a. Applicant failed to timely file, as required, his Federal income tax returns for tax years 2020 and 2021. Applicant stated that he has not yet filed these income tax returns yet, but he plans to do so. (Tr. pp. 28-29.)

1.b. Applicant is indebted to the Federal Government for delinquent taxes in the approximate amount of \$9,410.42, owed for tax years 2021 and 2022. Applicant has not yet started a payment plan to resolve this debt. Applicant explained that he also owes back taxes for tax year 2023, in the amount of \$1,200. Two weeks ago, he made his first payment of \$200 monthly that he plans to continue every month until the debt is paid in full. When the debt is resolved, he plans to start paying his back taxes owed for tax years 2021 and 2022. The debt remains owing. (Tr. pp. 32-34.)

1.c. Applicant failed to timely file, as required, his state income tax returns for tax years 2019, 2020, 2021, and 2022. He stated that he has procrastinated and not filed these income tax returns yet, but he plans to do so. (Tr. pp. 38 and 55.) Applicant stated that he owed state tax debt in the amount of \$900 for tax year 2023. He stated that he paid the debt. (Tr. pp. 39-40.)

1.d. Applicant is indebted to a creditor in the approximate amount of \$10,295 for an account that was placed for collection. This is a timeshare that Applicant purchased in 2019. He stated that he has tried to settle the debt with the creditor but has been unsuccessful. (Tr. p. 45.) The debt remains owing.

1.e. Applicant is indebted to a creditor in the approximate amount of \$3,459 for an account that was charged off. Applicant denied this debt. Applicant's car was stolen in 2015, and later found by the police. It needed repairs, and Applicant allowed it to go to collection. The debt is the balance owed on the car loan. Applicant stated that he settled the debt in 2023. (Tr. pp. 40-43.) He stated that he has a receipt for payment that he will provide. (Tr. p. 43.) The debt has been paid. (Applicant's Exhibits A and B.)

Applicant believes that with his current job, and his wife's income when she obtains employment, he will be able to pay off his delinquent debts. (Government Exhibit 7.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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. 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 clearance 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 as to 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. 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.

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

- (a) inability or unwillingness 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.

Applicant has failed to file his Federal and state income tax returns for the years in question. He also owes delinquent back taxes, and he has a history of excessive financial indebtedness. He recently settled one of his consumer debts. He has not yet filed any of the Federal or state income tax returns in question. He stated that he recently started to address other back taxes he owes for tax year 2023, but not the back taxes alleged in the SOR. His actions or inactions both demonstrate a history of not addressing his debt and/or an inability to do so. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under the Financial Considerations guideline are potentially applicable under AG ¶ 20.

- (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, or a death, divorce, or separation), 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;

(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 authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant has a history of procrastination that has affected his ability to timely file his annual Federal and state income tax returns, as required by law. Although he received notice of the Government's concern about his failure to file his income tax returns in January 2024, when he received the SOR, he still had not filed any of these income tax returns, either Federal or state. He had not paid or even started to pay the delinquent taxes alleged in the SOR. He has settled one consumer debt, but the others remain owing. He has been gainfully employed on a full-time basis, from 2014 through 2022, and then from 2023 to the present, but has made very little effort to resolve his financial issues. Despite the fact that he has between \$400 and \$500 dollars left at the end of the month in discretionary funds, he has not used it to resolve his outstanding debts. This does not demonstrate that he is responsible. Instead, it shows his lack of responsibility. Applicant's financial irresponsibility and inaction for so long casts doubt on his current reliability, trustworthiness, or good judgment.

Applicant stated that he recently set up a payment plan to resolve his 2023 back taxes, (not alleged in the SOR), and that he is currently making those monthly payments. He has not started to pay any of the delinquent tax debt alleged in the SOR. His conduct shows poor judgment, unreliability, and financial instability. None of the mitigating conditions are applicable.

Applicant has settled one of the debts listed in the SOR. However, he still owes in excess of \$23,000 to his other creditors. There is insufficient evidence in the record to show that the Applicant has carried his burden of proof to establish mitigation of the government security concerns under Guideline F.

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. Applicant has failed to show financial responsibility and is not found to be sufficiently reliable to properly protect and access classified information.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I conclude Applicant has not mitigated the Financial Considerations security concern.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.d:	Against Applicant
Subparagraph 1.e.	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 interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge