



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



In the matter of:)
)
) ISCR Case No. 23-02573
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

07/18/2024

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On December 19, 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 January 22, 2024, and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on February 23, 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 March 12, 2024. As of May 3, 2024, he had not responded. The case was assigned to me on July 2, 2024. The Government exhibits included in the FORM are admitted in evidence without objection.

Findings of Fact

Applicant is a 47-year-old employee of a defense contractor. He has worked for his current employer since 2022. He is a high school graduate. He is married with three adult children and an adult stepchild. (Items 5, 10)

Applicant has a history of failure to file income tax returns and pay his taxes when due. He reported his tax issues on the Questionnaire for National Security Positions (SF-86) he submitted in June 2022. He wrote that he forgot to file some returns, but all the returns had been filed, and he was making payments. (Items 4, 5)

Applicant's stepchild was sentenced to prison in October 2018. He stated that the shock of the sentence and the legal fees put him and his wife in a tailspin, "emotionally, physically, and financially." His wife, who handled the finances, forgot to file the tax returns. Applicant contracted a serious case of COVID-19 in November 2020, which almost took his life. He stated that during the pandemic, the IRS was difficult to contact. He stated they were surprised by how much they owed the IRS, and he believed it was because his children were reaching majority, and they could no longer be claimed as dependents. (Items 6, 10) The status of Applicant's taxes, as derived from IRS tax transcripts obtained in February 2023, state documents, and other evidence, is as follows:

2017 - Federal

Applicant's and his wife's (hereinafter, I will only refer to Applicant even though the taxes also include his wife) 2017 federal income tax return was received by the IRS on July 17, 2020. His adjusted gross income for 2017 was \$129,595, and his taxable income was \$100,695. His tax per the return was \$16,086, and \$9,429 was withheld from his wages, leaving an unpaid balance. From June 2022 through August 2022, Applicant made three payments of \$100 each. As of February 2023, he owed \$11,486 in taxes and interest. He stated in his response to the SOR that the amount owed had grown to \$11,894. (Items 4-6)

2017 - State

Applicant did not file his 2017 state income tax return until July 2020. His return indicated he owed \$544, which did not include any added interest or penalties. He stated in the response to the SOR, without corroborating documentation, that the balance was \$0. (Items 4-6)

2018 - Federal

Applicant's 2018 federal income tax return was received by the IRS on July 18, 2020. His adjusted gross income for 2018 was \$127,576, and his taxable income was \$103,576. His tax per the return was \$10,666 in taxes, and \$8,026 was withheld from his wages, leaving an unpaid balance. Penalties and interest were added. He established an installment agreement in February 2021, but no payments went to this

tax year. In May 2021, \$3,740 was withheld from what would have been a refund for his 2020 taxes and transferred to what he owed for his 2018 taxes. In June 2022, he paid the IRS \$197, which addressed all the taxes, penalties, and interest for 2018. (Items 4, 6)

2019 - Federal

Applicant filed his 2019 federal income tax return on time. His adjusted gross income for 2019 was \$129,832, and his taxable income was \$105,432. His tax per the return was \$10,912, and \$9,311 was withheld from his wages, leaving an unpaid balance. Penalties and interest were added. He paid \$500 in July 2020. He established an installment agreement in May 2021, but no payments went to this tax year. In January 2022, he was no longer in an installment agreement. As of February 2023, he owed \$1,397 in taxes, penalties, and interest. He stated in his response to the SOR, without corroborating documentation, that the amount owed had decreased to \$438. He did not indicate whether the decrease was due to a recalculation of his taxes, voluntary payments, or involuntary withholding. (Items 4, 6)

2020 - Federal

Applicant filed his 2020 federal income tax return on time. His adjusted gross income for 2020 was \$124,289, and his taxable income was \$99,489. With credits (presumably COVID-19 relief), he would have received a refund, but \$3,700 in what would have been a refund was transferred to pay part of his 2018 taxes. There is no balance owed. (Items 4, 6)

2020 - State

SOR 1.d alleges that Applicant failed to file his 2020 state income tax return. Applicant stated that he did file the return, but the state could not produce the return. He stated that he found the return and resubmitted it. The state accepted the return, and a refund was due. (Items 4, 6)

2021 - Federal

The IRS refunded \$5,600 from credits to Applicant in May 2021. The IRS received Applicant's 2021 federal income tax return in June 2022. His adjusted gross income for 2021 was \$145,814, and his taxable income was \$120,714. His tax per the return was \$17,554, and \$9,983 was withheld from his wages, leaving an unpaid balance. Penalties and interest were added. As of February 2023, he owed \$7,391 in taxes, penalties, and interest. He stated in his response to the SOR that the amount owed had grown to \$7,812. (Items 4, 6)

Applicant did not respond to the FORM, so additional information about his taxes is unavailable.

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 owes the IRS more than \$20,000 for three tax years (SOR ¶¶ 1.a-1.c). The above disqualifying conditions are applicable.

I accept Applicant's assertions that his 2020 state income tax return has been filed and state taxes owed for 2017 have been paid. Any security concerns raised by his state taxes have been mitigated. SOR ¶¶ 1.d and 1.e are concluded for Applicant.

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.

Applicant attributed his tax problems to the emotional, physical, and financial trauma associated with his stepchild going to prison in 2018, his life-threatening case of COVID-19 in 2020, and his misunderstanding of when he could claim dependents. Some of those events were beyond Applicant's control, but he has worked for his current employer since 2022, and the record contains minimal evidence of voluntary payments. Whether I use the IRS tax transcripts from February 2023 or Applicant's statement in his response to the SOR, he still owes the IRS more than \$20,000. Because he did not respond to the FORM, additional information about his taxes is unavailable.

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).

Applicant does not have a track record that would enable me to find that his tax problems will be resolved within a reasonable period. He did not act responsibly under the circumstances, and he did not make a good-faith effort to pay his taxes. His tax issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. None of the mitigating conditions are sufficiently applicable to mitigate 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 in my whole-person analysis.

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
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraphs 1.d-1.e:	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.

Edward W. Loughran
Administrative Judge