



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



In the matter of:)	
)	
)	ISCR Case No. 23-02631
)	
Applicant for Security Clearance)	

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

09/09/2024

Decision

BENSON, Pamela C., Administrative Judge:

Applicant did not mitigate the financial considerations security concern. He failed to timely file Federal and state income tax returns for multiple years, and he has unresolved tax delinquencies. He is financially unable to pay his creditors and the bulk of his delinquent debt remains unresolved. National security eligibility for access to classified information is denied.

History of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), or security clearance application (SCA), on June 18, 2023. (Item 3) On December 19, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). (Item 1) The DCSA 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 January 5, 2024, Applicant provided a response to the SOR, and requested a decision based upon the administrative record. (Item 2)

A copy of the file of relevant material (FORM), dated March 8, 2024, was provided to Applicant. Department Counsel attached as evidence to the FORM Items 1 through 5. Applicant received the FORM on April 1, 2024, and he was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. On April 29, 2024, Applicant responded to the FORM with a personal statement, but he did not submit any supporting documentation. On June 25, 2024, the case was assigned to me. I admitted into evidence the Government's FORM Items 1 through 5.

Findings of Fact

Applicant is 53 years old. He was married in 2009 and has two children, ages 18 and 16, and two adult stepchildren. He has worked at warehouses since about 2012. He was unemployed the entire year of 2018, and his wife was unable to work during the pandemic. A DOD contractor has sponsored Applicant for a security clearance to perform specific job duties. This is his first application for a DOD security clearance. (Item 3)

Applicant reported on his June 2023 SCA that he had not filed federal or state income tax returns for the last few years, and he had outstanding federal taxes. He also disclosed he was delinquent paying child support in the approximate amount of \$112,500. He attributed his financial troubles from his wife not working and supporting a family of four on one income. He also listed other past due accounts that he is unable to pay. (Item 3)

The SOR alleges six delinquent debts totaling approximately \$119,500, and two SOR allegations allege Applicant failed to file federal and state income tax returns for tax years 2020, 2021, and 2022. He admitted all eight SOR allegations (§§ 1.a-1.h) in his Answer, and his admissions are accepted as findings of fact. (Items 1, 2)

Applicant was interviewed by an authorized DOD investigator in July 2023. He reported that his wife is now employed parttime for a county office. He disclosed that his wages were currently being garnished by the state for unpaid 2021 taxes. Their combined income is just enough to pay the daily expenses for their family of four, and he is unable to make any payments to his delinquent creditors at the current time. His financial strategy is to reduce their expenses by searching for a property that charges less rent and to start working for the DOD contractor for a higher wage. He also hopes his wife is offered a full-time position with her employer, which would help their finances. By October 2023, he anticipated he would start arranging payment plans with his delinquent creditors. He expected that his 2020 through 2022 federal and state income tax returns would be filed and paid by October 2023. He also planned to start paying his outstanding child support at that time. (Item 5)

SOR § 1.a alleges a credit card account referred for collection in the amount of \$3,751. Applicant failed to provide sufficient evidence to show that he paid, is currently paying, or that he has settled this delinquent account, as promised in his July 2023 background interview. This debt remains unresolved. (Items 2-5)

SOR § 1.b alleges an account referred for collection in the amount of \$624. Applicant failed to provide sufficient evidence to show that he paid, is currently paying, or

that he has settled this delinquent account, as promised in his July 2023 background interview. This debt remains unresolved. (Items 2-5)

SOR ¶ 1.c alleges an insurance company account referred for collection in the amount of \$168. Applicant failed to provide sufficient evidence to show that he paid, is currently paying, or that he has settled this delinquent account, as promised in his July 2023 background interview. This debt remains unresolved. (Items 2-5)

SOR ¶ 1.d alleges a child-support account past due in the amount of \$112,806. Applicant failed to provide sufficient evidence to show that he paid, is currently paying, or that he has settled this delinquent account, as promised in his July 2023 background interview. This debt remains unresolved. (Items 2-5)

SOR ¶ 1.e alleges Applicant failed to timely file, as required, his state income tax returns for tax years 2020 through 2022. He failed to provide sufficient evidence to show that he filed these state income tax returns, as promised in his July 2023 background interview. These state income tax returns remain unfiled. (Items 2-5)

SOR ¶ 1.f alleges Applicant failed to timely file, as required, his federal income tax returns for tax years 2020 through 2022. He failed to provide sufficient evidence to show that he filed these federal income tax returns, as promised in his July 2023 background interview. These federal income tax returns remain unfiled. (Items 2-5)

SOR ¶ 1.g alleges Applicant owes approximately \$1,000 for unpaid state taxes for tax year 2021. He failed to provide supporting evidence to show that he paid or is currently paying through wage garnishment. This state tax debt remains unresolved. (Items 2-5)

SOR ¶ 1.h alleges Applicant owes approximately \$1,200 for unpaid federal taxes. He failed to provide sufficient evidence to show that he paid or is currently paying this federal tax debt, as promised in his July 2023 background interview. This federal tax debt remains unresolved. (Items 2-5)

On April 29, 2024, Applicant responded to the Government's FORM by providing a personal statement. He admitted to making financial mistakes in life. Applicant does not believe his financial challenges classify him as a risk to U.S. security. He stated, "I love my country, good and bad, and would never do anything to jeopardize my position." (FORM response)

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 concern under Guideline F (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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The record evidence establishes the following disqualifying conditions under AG ¶ 19:

- (a) inability 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.

AG ¶ 20 describes conditions that could mitigate security concerns. 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 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;

(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 or provides evidence or actions to resolve the issue; 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 bears the burden of production and persuasion in mitigation. An applicant is not held to a standard of perfection in his or her debt-resolution efforts or required to be debt-free. “Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by ‘concomitant conduct,’ that is, actions which evidence a serious intent to effectuate the plan.” ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). See, e.g., ISCR Case No. 13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014).

None of the mitigating conditions can be applied here. Applicant attributed his financial delinquencies to loss of income after he was unemployed in 2018, and his wife’s loss of employment in 2020. Notwithstanding these events that affected their finances, Applicant must demonstrate that he acted responsibly under the circumstances.

There is no evidence of a settlement, arranged payment plan, or that Applicant is paying or has paid a debt in full. Overall, I find that Applicant has not demonstrated that he acted responsibly to address his financial and tax issues, or that his finances are currently under control. Applicant did not provide sufficient evidence to mitigate the financial considerations security concern.

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 have incorporated my

