



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 23-01961
)
Applicant for Security Clearance)

Appearances

For Government: Troy Nussbaum, Esq., Department Counsel
For Applicant: *Pro se*

05/13/2024

Decision

MASON, Paul J., Administrative Judge:

The record shows that Applicant was unemployed three times for a total of 14 months between December 2015 and the present. During his unemployment between December 2015 and June 2016, he decided that he was not going to file his Federal and state tax returns until he landed a better paying job. He has been consistently employed since May 2019. Yet, as of March 16, 2024, there is no documentation demonstrating that he has filed all his missing Federal and state tax returns. Although he paid a large state tax lien in March 2023, he has not paid delinquent Federal taxes for 2018, 2010, 2021, and 2022. His evidence in mitigation is insufficient to overcome the disqualifying evidence under the guideline for financial considerations. Eligibility for security clearance access is denied.

Statement of the Case

On December 3, 2022, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to apply for a security clearance required for a position with a defense contractor. On January 17, 2023, he provided a personal subject interview (PSI) to an investigator from the Office of Personnel Management (OPM). The

Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) could not make the affirmative findings required to continue a security clearance, and issued to Applicant a Statement of Reasons (SOR), dated October 31, 2023, citing security concerns raised by financial considerations (Guideline F), drug involvement) (Guideline H), criminal conduct (Guideline J), and personal conduct (Guideline E). The action was taken under Executive Order (E.O.) 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) effective in the DOD on June 8, 2017.

Applicant provided his answer to the SOR on November 20, 2023. He admitted some allegations and denied others. He decided to have his case evaluated administratively on the written record in lieu of a hearing. On February 9, 2024, the Government sent a copy of its File of Relevant Material (FORM), the Government's evidence in support of the allegations in the SOR, to Applicant. The FORM contains eight items of evidence in support of the SOR. The Government also requested that Applicant either admit or deny the proposed amendments to the SOR. (See Rulings on Evidence below) He received the FORM on February 15, 2024. He was provided 30 days after receipt of the FORM to submit a response that was due by March 16, 2024. The Defense Office of Hearings and Appeals (DOHA) received no response from Applicant. The Government's eight items of evidence have been admitted into the record. The record closed on March 16, 2024. I was assigned the case on May 3, 2024.

Rulings on Procedure

On the first page of the FORM (February 8, 2024), pursuant to E.3.1.13. of Department of Defense Directive 5220.6, Department Counsel moved to amend the SOR by withdrawing all allegations under Guideline H (SOR ¶ 2.a), Guideline J (SOR ¶¶ 3.a and 3.b), and Guideline E (SOR ¶ 4.a), leaving the factual allegations under SOR ¶ 1. The motion to withdraw SOR ¶¶ SOR 2, 3, and 4, is hereby granted.

The Government also moved to amend SOR ¶¶ 1.g, 1.h, and 1.i as follows:

SOR ¶ 1.g – Retaining the first sentence and withdrawing the second sentence of the allegation.

SOR ¶ 1.h – Reducing the number of missing state tax returns in the original allegation (2017 through 2022) to 2018, 2019, and 2021.

SOR ¶ 1.i – The original allegation is amended to read: You were charged in about October 2020, in state Z, with SIMPLE WORTHLESS CHECK, in violation of the state Z statute for conduct that occurred between 2001 and 2004. That charge was dismissed in December 2020.

The Government requested that Applicant incorporate his answers to the three amended allegations under SOR ¶¶ 1.g, 1.h, and 1.i, in his Response to the FORM. I interpret Applicant's failure to provide answers to the proposed amendments to SOR ¶¶ 1.g, 1.h, and 1.i, as a denial of the three new allegations.

Findings of Fact

There are two delinquent commercial debts and six tax allegations under the first paragraph of the SOR. The two commercial debts became delinquent between June 2015 and May 2017. The two Government credit bureau reports (CBRs) posted in Items 5 (July 2023) and 6 (December 2022) verify that Applicant owes the debts. His admission to all tax debts and failure to file tax returns confirm his responsibility for the tax debt and failure to file tax returns.

Applicant is 48 years old and has been married 14 years to his second wife. He graduated from high school in June 1994. He has a 25-year-old son, and two daughters, 18 and 21. He also has two adult-aged stepchildren, a stepson 28 years old, and a stepdaughter 27 years old. (item 3 at 27-33)

Since December 2022, Applicant has been living in a hotel close to his current job as a manufacturing analyst in state Y, where he has been employed since November 2022. He goes home to his permanent address twice a month in state X. (Item 8 at 2) Before his current job, he was a project engineer, a senior checker, and a manufacturing engineer for different employers. For brief period of time during his employment from November 2011 to the present, he was unemployed for six months at the end of 2018 to May 2019, four months from February 2017 to June 2017, and four months from December 2015 to April 2016. (Item 3 at 11-22) Since 2011, Applicant has been unemployed for a total of 14 months.

In his May 2023 interrogatory answers (Item 4), Applicant attributed part of his financial problems to an employment layoff in December 2015, when he was about to buy a house. With his accumulating debt in 2015 and 2016, he decided not to file and pay his federal and state taxes. Additionally, financial problems have been generated by maintaining two households in state X and state Y, since he decided to relocate in November 2022 due to disappearing aerospace jobs. (Item 4 at 2, 5)

In the May 2023 interrogatory requesting additional information about his delinquent taxes, Applicant noted that there were federal and state tax programs that he qualified for. He did not explain what the programs were or whether he participated in any of them. He explained that on March 24, 2023, he paid a state X tax lien of \$7,913. (Item 4 at 3, 16) His wife found a new job, reducing his financial obligations. He believed that there were indicators that his new position would last. (Item 4 at 3, 5)

SOR ¶ 1.a – This credit-card account became delinquent in 2019 and transferred for collection. Applicant's denial of this debt is based on his claim that the

account is still posted in his CBR beyond the time period set forth in the Fair Credit Reporting Act, and is no longer enforceable. He intends to dispute this listing as he has done in the past. (Applicant's November 2023 answer to the SOR; Item 8 at 5) The account has not been resolved.

SOR ¶ 1.b – This account represents a car loan that became delinquent and was charged to profit and loss in June 2015. (When an account is charged off to profit and loss, the creditor can reduce his tax liability by posting the delinquent account in his or her profit and loss statement. The creditor may then close the account or sell it to a collections agency. The debtor still owes the debt.) Applicant's car was totaled and his insurance company paid the balance of the loan except for the amount posted in the allegation. He indicated he was disputing the debt because the credit union should have paid the debt through gap insurance that the credit union required him to buy when he purchased the car. (Applicant's November 2023 answer to the SOR; Item 8 at 5) No documentation was presented to support any of Applicant's claims. The account has not been resolved.

SOR ¶¶ 1.c, 1.d, 1.e, 1.f – Applicant owes delinquent federal taxes for tax years 2018, 2020, 2021, and 2022, totaling \$29,158. In his November 2023 answer to the SOR, he indicated he was making payments on his overall tax debt. This claim is corroborated by a payment of \$7,613 in March 2023, to the state X tax agency to settle a state tax lien. Significantly, he settled the debt four months before the issuance of the SOR. He provided no information about his intentions with respect to the delinquent Federal taxes. SOR ¶¶ 1.c, 1.d, 1.e, and 1.f have not been resolved.

Amended SOR ¶ 1.g – Applicant provided tax account transcripts showing that he filed the 2018 federal tax return in March 2023 and that he filed 2019, 2020, 2021, and 2023 federal tax returns between February and June 2023. The federal tax returns for 2017 and 2022 have not been filed. (Item 4 at 6-15)

Amended SOR 1.h – In his November 2023 answer to the SOR, Applicant was told by state X tax agency that his state tax returns for 2018, 2019, and 2020 may have been submitted in the wrong form. He was in the process of refiling them, but indicated that refiling could not be done electronically. In May 2023, the state X tax agency notified him that no tax returns were on file for tax years 2018, 2019, and 2021. (Item 4 at 17; Applicant's November 2023 answer to the SOR). He provided no additional information regarding the state tax returns. SOR ¶¶ 1.g and 1.h have not been completely resolved.

Amended SOR ¶ 1.i - This allegation is resolved in Applicant's favor. How could he be charged with a crime for conduct that supposedly occurred 16 to 20 years earlier? Charging him with a crime so that the jurisdiction could clear the offense from their records, is a reasonable explanation, but is not supported by the evidence. There is no factual support except surmise, for the conclusion that Applicant paid restitution for the worthless check charge that was dismissed in December 2020.

Applicant explained at the conclusion of his November 2023 answer to the SOR that he has made some (financial) mistakes in his life “but nothing I [he] didn’t recover from.” that he rectified. He noted he was truthful in his December 2022 e-QIP responses and his January 2023 answers to the SOR. He observed that he needed to be more careful in addressing his financial issues. (November 2023 answer to the SOR)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with common sense and the general factors of 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(d) 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 applicant or proven by Department Counsel. . .” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Guideline F, Financial Considerations

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.

AG ¶ 19. Conditions that could raise a security concern and may be disqualifying include:

- (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 Federal, state, or local income tax as required.

A person's practice of paying his voluntarily incurred debts is a private matter until evidence reveals that he is not paying his debts in a timely fashion. Exposing irresponsibility in his personal finances may raise serious security concerns as to whether he will demonstrate the same irresponsibility in safeguarding classified information, or choosing to ignore security responsibilities that he does not agree with. See 11-05365 at 3 (App. Bd. May 1, 2012) Adverse evidence from credit reports can usually meet the Government's obligation of proving delinquent debts. See, e.g., ISCR Case No. 14-02403 at 3 (App. Bd. Aug. 18, 2015); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) The Government credit reports establish that SOR ¶ 1.a has been delinquent since May 2017, and that SOR ¶ 1.b has been delinquent since June 2015. AG ¶¶ 19(a) and 19(c) apply. Applicant's failure to file taxes for the identified years in SOR ¶ 1.g and 1.h, and his failure to pay Federal taxes identified in SOR ¶¶ 1.c, 1.d, 1.d, and 1.f is disqualifying conduct within AG ¶ 19(f).

AG ¶ 20. Conditions that could mitigate security concerns include:

(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 of the dispute or provides evidence of 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.

AG ¶ 20 (a) does not apply since Applicant still owes about \$29,158 in delinquent Federal taxes for tax years 2018, 2020, 2021, and 2022. He has filed some but not all Federal and state tax returns. Also, he still owes the commercial debts appearing at ¶¶ SOR 1.a and 1.b. The large amount of his remaining debt continues to cast doubt on his reliability, trustworthiness, and judgment.

Applicant receives some mitigation under AG ¶ 20(b), because he has been unemployed three times since December 2015. Additionally, he has supported two households in states X and Y since November 2022. On the other hand, he has been consistently employed since May 2019. He took no action to pay off the two commercial debts. And he declared during his layoff from December 2015 to June 2016, that he was not going to file his future tax returns and pay his taxes until he got a better paying job.

The lack of financial counseling or evidence of a written budget reduces the applicability of the first and second prongs of AG ¶ 20(c), and affords Applicant limited mitigation under AG ¶ 20(g). Being qualified for participation in Federal and state tax programs has little probative value when there is no explanation of what the programs were or the extent of his participation. While he paid more than \$7,600 to quash a state tax lien in March 2023, he has not filed at least three state tax returns identified by the state tax agency. He has not taken documented action to bring his Federal tax debt under control. Specifically, in addition to the remaining federal returns he has not filed, he provided no evidence of contacting the Internal Revenue (IRS) to structure a repayment plan or an offer of compromise. In Applicant's opinion, AG ¶ 20(e) applies to SOR ¶¶ 1.a and 1.b for different reasons. SOR ¶ 1.a is no longer enforceable based on the expiration of the pertinent statute of limitations. SOR ¶ 1.b applies based Applicant's contention, without supporting documents, that he received gap insurance which the credit union could not validate. Both claims lack merit.

AG ¶ 20(d) does not apply because Applicant is not engaged in a good-faith effort to repay his two commercial creditors. Without documentation to support his claims of paying the SOR ¶ 1.b debt with gap insurance, the debt finds no mitigation under AG ¶ 20(e).

Whole-Person Concept

I have examined the evidence under the specific guidelines in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant has not furnished sufficient evidence to establish that his delinquent debts are being resolved or under control. His reliance on a limitations statute to avoid responsibility for repaying SOR ¶ 1.a, one of the commercial debts, is a legally permissible course of action, but does not demonstrate a good-faith effort to resolve one's debts within the meaning of AG ¶ 20(d) of the Directive. See ISCR Case No. 15-02326 at 3 (App. Bd. Oct. 14, 2016); ISCR Case No. 15-01208 at 3 (App. Bd. Aug. 26, 2016). In Guideline F cases, the DOHA Appeal Board has repeatedly held that, to establish his case in mitigation, an applicant must present a "meaningful track record" of debt repayments that result in debt reduction. See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007) While an applicant is not required to show that every debt listed in the SOR is paid, the applicant must show that he has a plan for debt resolution and has taken significant action to implement the plan. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006) From the record presented, Applicant has no plan in place to address his Federal taxes and the two commercial debts. After a full review of the entire record from an overall common-sense point of view, Applicant's ongoing financial problems have not been mitigated.

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.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Paragraph 2, Guideline H:	WITHDRAWN
Paragraph 3, Guideline J:	WITHDRAWN

Paragraph 4, Guideline E:

WITHDRAWN

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 Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge