



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



In the matter of:)	
)	
)	ISCR Case No. 22-02152
)	
Applicant for Security Clearance)	

Appearances

For Government: John Renehan, Esq., Department Counsel
For Applicant: *Pro se*

11/20/2024

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 November 7, 2022, 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 November 29, 2022, and requested a hearing before an administrative judge. The case was assigned to me on July 25, 2024.

The hearing convened as scheduled on September 17, 2024. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence.

Findings of Fact

Applicant is a 40-year-old part-time employee of a defense contractor. He has worked for his current employer or a predecessor company on the same contract since

about September 2020. He believes he will be hired to a full-time position if he receives a security clearance. He attended college for a period without earning a degree, and he has a certification. He has never married, and he has no children. (Transcript (Tr.) at 14-24; GE 1)

Applicant has not filed federal and income tax returns as required since about 2008. He was a self-employed independent contractor (1099 employee) working as a laborer for a remodeling company from about 2009 to 2014. He was unemployed from about December 2014 to August 2015. He was a regular employee (W-2) of a fast food restaurant from about August 2015 to January 2019. He was a self-employed independent contractor (1099 employee) working as a laborer for a construction company from about December 2018 until he started working for a defense contractor in September 2020. (Tr. at 14, 20-22, 25-31, 35-38; Applicant's response to SOR; GE 1-3)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in May 2021. He reported that he failed to file his federal income tax returns for tax years 2010 to 2020. He also indicated that he owed estimated federal taxes of \$5,000 for 2010; \$7,653 for 2011; \$11,203 for 2012; \$12,000 for 2013; and \$5,000 for 2014. He did not report that he owed taxes for later years. He testified that some of the figures came from notices from the IRS. He wrote in the SF 86 that he did not receive 1099 forms every year. He wrote that he was "[s]till currently getting everything together to file and pay previous taxes." (Tr. at 32-34; GE 1)

Applicant was interviewed for his background investigation in July 2021. He discussed his unfiled tax returns. He stated that from 2014 to 2020, he was young and made minimum wage. He received his 1099 forms from his employers and notifications from the IRS, but he did not have the funds to file his tax returns and pay his taxes. He stated that he was gathering his documents and had sought assistance from a friend. He stated that he would file the returns and pay the taxes once he had enough discretionary income. (GE 3)

The DoD requested IRS tax account transcripts and the equivalent from Applicant's state (in an apparent typographical error, the DoD requested that he provide information from the wrong state). Applicant responded in September 2022 with IRS tax account transcripts for tax years 2012, 2019, and 2020. He stated they were the only ones available from the IRS. His state indicated that his "account does not exist," likely because he had not filed a state tax return in more than ten years. (GE 2)

The IRS tax account transcript for 2012 indicates that the IRS prepared a substitute tax return in 2014. As of July 2022, he owed \$11,694 in taxes, penalties, and interest for tax year 2012. The 2019 and 2020 account transcripts indicate that no returns were filed. (GE 2)

Applicant has not filed his back tax returns. He testified that he was working part-time, but he was saving up to hire a tax professional to file the returns. (Tr. at 14-15, 25, 42) The SOR did not allege any tax issues after tax year 2020. Any matter not alleged in

the SOR cannot be used for disqualification purposes but may be considered in the application of mitigating conditions and in the whole-person analysis.

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 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.

Applicant did not file his federal and state income tax returns as required for tax years 2010 through 2020 (SOR ¶¶ 1(a) and 1(b)). An IRS tax account transcript indicated that in 2022, he owed \$11,694 in taxes, penalties, and interest for tax year 2012 (SOR ¶ 1(c)). AG ¶ 19(f) is applicable.

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;

(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.

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 filing tax returns 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 submitted an SF 86 in 2021, and he was interviewed the same year. He responded to DoD interrogatories in 2022. He was under notice that his unfiled tax returns and unpaid taxes were a concern to the DoD. He still has not filed any tax returns, and he has not paid his back taxes.

There is insufficient evidence for a determination that Applicant's tax problems will be resolved within a reasonable period. His tax issues are recent and ongoing. His failure to fulfil his duty to file his income tax returns and pay his taxes continues to raise doubts about his judgment, reliability, and willingness to follow rules and regulations. None of the above mitigating conditions are applicable.

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 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

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