



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



In the matter of:)	
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XXXXXXXXXXXXXXXXXX)	ISCR Case No. 23-01843
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro Se*

09/27/2024

Decision

KATAUSKAS Philip J., Administrative Judge:

Applicant did not provide sufficient evidence to mitigate the security concerns raised under Guideline F, financial considerations, but the Government failed to establish its case proving security concerns under Guideline B, foreign influence. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his security clearance application (SCA) on October 10, 2021, in connection with his employment by a defense contractor. On December 19, 2023, following a background investigation, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations, and Guideline B, foreign influence. DOD issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4 (SEAD 4) *National Security Adjudicative Guidelines* (AG), which became effective on June 8, 2017.

On April 4, 2024, Applicant submitted an answer to the SOR and attached his IRS Account Transcripts for tax years 2017 through 2021 (Answer). He requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) based on the administrative (written) record, in lieu of a hearing. On April 30, 2024, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1 through 8. On May 1, 2024, the FORM was mailed to Applicant, and he received it on May 20, 2024. He was afforded an opportunity to note objections and to submit material in refutation, extenuation, or mitigation, and was given 30 days from receipt of the FORM to do so. He submitted no response. Government Items 1 and 2, the SOR and the Answer with IRS Transcripts, respectively, are the pleadings in the case. Items 3 through 8 are admitted without objection. The case was assigned to me on September 4, 2024.

Findings of Fact

After a thorough and careful review of the pleadings and the Government's exhibits, I make the following findings of fact:

Applicant is 51 years old and has been married to his fourth spouse since November 2016. He has three children, two daughters ages 26 and 16, and a son 5 years old. Applicant graduated from high school in 1991. He served on active duty in the U.S. Army from November 1991 until his honorable discharge in June 2001. He has been employed by defense contractors since April 2010 and by his current employer since May 2021. (Item 3.)

Under Guideline F, the SOR alleged that Applicant failed to file federal income tax returns for tax years 2017 through 2022, as required. The SOR also alleged that he has six delinquent consumer accounts totaling \$41,112. (Item 1.) He admitted all allegations with explanations that are discussed below. (Items 2 and 4.)

Under Guideline B, the SOR alleged that Applicant's wife, mother-in-law, and father-in-law are citizens and residents of the Philippines. (Item 1.) He admitted only that his in-laws are residents of the Philippines. (Item 2.) His wife is a citizen of the Philippines, and his mother-in-law is a citizen of the Philippines. (Item 3.) The Government's brief amended the SOR to strike the word "father-in-law" from SOR ¶ 1.a. "Father-in-law" appears in SOR ¶ 2.a, not in SOR ¶ 1.a. SOR ¶ 2.a is amended to strike "father-in-law." His father-in-law is deceased. (Item 3.)

Applicant communicates with his mother-in-law via telephone monthly. (Item 3.) The record has no other information about Applicant's mother-in-law, her occupation, his late father-in-law, his wife's family, or his communications, if any, with his wife's family. The record is silent on where Applicant and his spouse reside. In his October 2021 SCA, he listed an APO (Army Post Office) in a Middle Eastern country as his residence. His spouse is listed as living in Manila, the Philippines. In the SCA, he states to "use my current address" for her address. Those responses are somewhat inconsistent, since the

Philippines is not a Middle Eastern country. His SCA also stated “have not started process to move back to US.” (Item 3.) There is nothing in the record about his spouse’s or his in-laws’ employments, professions, businesses, financial, social contacts, or property interests.

SOR ¶ 1.a. Failure to File Timely Federal Income Tax Returns for Tax Years 2017 to 2022. Applicant’s Answer admitted this allegation stating: “I admit that taxes were not filed timely due to not taking vacation to get completed by usual tax firm. Also Covid hit. I have received IRS Transcripts Comp [sic] for 2017-2021. Just awaiting 2022 and current year. Transcripts supplied previous.” His Answer included IRS Transcripts for the five tax years 2017 through 2021. (Item 2.) Those Transcripts showed returns were filed for tax years 2017 through 2021. Each return was filed between two and five years late and after the clearance process began in October 2021. The Transcripts showed no extensions to file late. He did not provide a Transcript for the sixth tax year, 2022, or any other documents showing that his tax year 2022 return was filed.

In Applicant’s January 18, 2022 personal subject interview (1/22 PSI), he said he was waiting for his son’s Social Security Number (SSN), so he could claim his son on his taxes. He also said he filed for and was granted extensions for each tax year at issue. In his May 5, 2022 personal subject interview (5/22 PSI), he claimed he was told that it would take at least a year to get a SSN for his son. Applicant planned to file this year. (Item 4.) His 2022 tax return remains unfiled.

SOR ¶ 1.b is an account in collection for \$7,494 for a residence where Applicant stayed before he transferred overseas. He admitted this debt and agreed with this account. He spoke with the apartment manager, who was supposed to release him due to deployment. Applicant will contact the manager, and if he owes, he will set up payment arrangements. (Item 4; 1/22 PSI.) In his 5/22 PSI, he said he contacted the manager, who did not recall this account. He disputed this account with Transunion and Equifax on March 25, 2022 and April 28, 2022, respectively. (Item 4; 5/22 PSI.) This account is reported as disputed on Item 6 (12/21 report) and Item 5 (7/22 report) but is not reported on Item 7 (4/24 report). He produced no documents supporting his dispute or reporting on the status of this debt.

SOR ¶ 1.c is an account in collection for \$1,435. Applicant admitted this debt and agreed with this account. He did not receive any notices from the creditor. He will contact the creditor, and if he owes, he will pay by March 2022. (Item 4; 1/22 PSI.) He disputed this account with Equifax and Transunion on March 17, 2022 and April 5, 2022, respectively. (Item 4; 5/22 PSI.) This account is reported in collection on Item 6 (12/21 report) and on Item 5 (7/22 report) but is not reported on Item 7 (4/24 report). He produced no documents supporting his dispute or reporting on the status of this debt.

SOR ¶ 1.d is an account in collection for \$461. Applicant admitted this debt and agreed with this account. He paid this debt years ago and cut up his card. The account is closed. (Item 4; 1/22 PSI.) He disputed this account with Transunion on March 6, 2022 and with Equifax on April 28, 2022. (Item 4: 5/22 PSI.) This account is reported

“DISPUTED FOLLOWING RESOLUTION” Item 6 (12/21 report) and on Item 5 (7/22 report) but is not reported on Item 7 (4/24 report). He produced no documents supporting his dispute or reporting on the status of this debt.

SOR ¶ 1.e is an account in collection for \$3,177. Applicant admitted this debt and agreed with this account. He will contact the creditor, and if he owes, he will pay by April 2022. (Item 4; 1/22 PSI.) He disputed this account and it was removed from Experian on April 5, 2022 and from Equifax on April 27, 2022. (Item 4: 5/22 PSI.) This account is reported “DISPUTED FOLLOWING RESOLUTION” on Item 6 (12/21 report). It is not reported on Item 5 (7/22 report) or on Item 7 (4/24 report). He produced no documents supporting his dispute or reporting on the status of this debt.

SOR ¶ 1.f is an account in collection for \$2,812. Applicant admitted this debt and agreed with this account. It is a cellphone data and roaming charge from 2014. He thought it had been resolved. (Item 4; 1/22 PSI.) He disputed this account with Transunion on April 24, 2022. It was removed from Experian on April 15, 2022 and from Equifax on May 2, 2022. This account was disputed on Item 6 (12/21 report) but was not reported on Item 5 (7/22 report) or on Item 7 (4/24 report). He produced no documents supporting his dispute or reporting on the status of this debt.

SOR ¶ 1.g is an account for a balance due of \$25,733 on a motor vehicle that was repossessed. Applicant admitted this debt and agreed with this account. When Applicant deployed overseas in 2015, he left this vehicle with his nephew to make payments. His nephew did not make the payments. Applicant did not get notices from the creditor. Applicant will contact the creditor, and if he owes, he will set up payment arrangements. (Item 4; 1/22 PSI.) He is currently in discussions with a credit repair agency. (Item 4; 5/22 PSI.) This account was reported on Item 6 (12/21 report) as: “FORECLOSURE OR REPOSSESSION. MERCHANDISE TAKEN BACK BY GRANTOR/POSSIBLE BALANCE DUE.” It was not reported on Item 5 (7/22 report) or on Item 7 (4/24 report). He produced no documents reporting on the status of this debt.

Administrative Notice

The Government has requested that I take administrative notice of facts about the Republic of the Philippines. (Item. 8.) Applicant did not object to that request. Item 8 is admitted. I have taken administrative notice of the facts contained in Exhibit 8. The Philippines is a multiparty, constitutional republic with a bicameral legislature. President Ferdinand Marcos, Jr., was elected on May 9, 2022 and began his six-year term in June. Voters also elected the vice president, senators, congressional representatives, and local government leaders. The elections were seen as generally free and fair, despite some reports of violence and vote-buying. The U.S. Department of State has issued Travel Advisories in certain areas and provinces due to crime, terrorism, civil unrest, and kidnapping.

Law and Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has noted, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines, which are flexible rules of law, apply together with common sense and the general factors of the whole-person concept. The administrative judge must consider all available and 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 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

The security concern relating to Guideline F 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Guideline F notes conditions that could raise security concerns under AG ¶ 19. The following conditions are applicable in this case:

- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file . . . annual Federal, state or local income tax returns or failure to pay annual Federal, state or local income tax as required.

The SOR debts are established by Applicant's admissions in his Answer, his PSIs, and the Government's credit reports. His failures to file federal income tax returns are established by his IRS Transcripts. Therefore, AG ¶¶ 19(b), (c), and (f) apply. The next inquiry is whether any mitigating conditions apply.

Guideline F also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt . . . and provides documented proof to substantiate the basis of the dispute; 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

I have considered mitigating condition AG ¶ 20(a). Applicant's SOR debts were not infrequent. Nor were his debts or unfiled tax returns incurred under unusual circumstances. His overdue tax returns for tax years 2017 through 2021 were not filed until October 2023 and February 2024, years after their due dates and without any extensions. The 2022 return has not yet been filed. That reflects poorly on his current reliability, trustworthiness, and good judgment. His SOR debts are not mitigated by AG ¶ 20(a).

I have considered mitigating condition AG ¶ 20(e). Applicant produced no documents to substantiate the basis for his disputes over SOR ¶¶ 1.a through 1.f. Nor did he produce any documents reporting on the current status of those debts. This mitigating condition on its face requires an applicant to provide such documentation. His SOR debts are not mitigated by AG ¶ 20(a).

As a general matter, the Appeal Board has held that “it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of specific debts.” See ISCR Case No. 09-07091 at 2 (App. Bd. Aug. 11, 2010) (quoting ISCR Cas04-10671 at 3 (App. Bd. May 1, 2006)). It is Applicant’s burden to mitigate established security concerns. At a minimum, he has not established the current status of his SOR debts.

I have considered mitigating condition AG ¶ 20(g). Although Applicant has belatedly filed federal income tax returns for tax years 2017 through 2021, he has not yet filed his return for tax year 2022. And there is nothing in the record that shows he had an arrangement with the IRS to allow late filings of those returns (let alone not filing 2022 at all). AG ¶ 20(g) does not apply to mitigate his failure to timely file income tax returns.

In sum, I find that mitigating conditions AG ¶¶ 20(a), (e), and (g) do not apply.

Guideline B, Foreign Influence

The security concern under the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Three are potentially applicable in this case:

- (a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology; and

(f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation.

There is very little in the record supporting Guideline B. Applicant is married to a woman who is a citizen of the Philippines. It is not clear where she lives. His October 2021 SCA is inconsistent on that point. In one entry she is described as living in Manila. In the same SCA, he says to use his APO mailing address in a Middle Eastern country for her. His SCA also stated “have not started process to move back to US.” His mother-in-law is a widow. He speaks to his mother-in-law monthly by telephone. It is not clear where Applicant and his spouse live, or if they are together, or apart. Items 2, 3, and 4 were signed at his APO address. There is nothing in the record about Applicant’s spouse’s or his in-laws’ employments, professions, businesses, finances, social contacts, property interests, or his communications, if any, with his wife’s family. I find that the evidence does not raise heightened risks or conflicts of interest under AG ¶¶ 7(a), (b), or (f). The Government has not established its case. Therefore, it is not necessary to consider mitigating conditions. I find for Applicant on SOR ¶ 2.

Whole-Person Concept

Under AG ¶ 2(a), 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. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the “whole-person” concept and factors). In my analysis above, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

Applicant leaves me with questions about his eligibility and suitability for a security clearance. Therefore, I conclude that Applicant has not provided sufficient evidence to mitigate the security concerns arising under Guideline F, financial considerations.

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.g:	Against Applicant
Paragraph 2, Guideline B	FOR APPLICANT
Subparagraph 1.a:	For Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant access to classified information. Eligibility for access to classified information is denied.

Philip J. Katauskas
Administrative Judge