



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



In the matter of:)
)
) ISCR Case No. 24-00370
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

10/28/2024

Decision

Dorsey, Benjamin R., Administrative Judge:

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

Statement of the Case

On April 10, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. On May 30, 2024, Applicant responded to the SOR and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on June 10, 2024. A complete copy of the file of relevant material (FORM) was provided to Applicant, who had 30 days after receipt of the FORM to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on June 8, 2024, but he did not submit a response. The case was assigned to me on September 12, 2024. The Government exhibits included in the FORM (Items 1-7) are admitted in evidence without objection.

Findings of Fact

Applicant is a 38-year-old employee of a defense contractor for whom he has worked since August 2022. He earned a high school diploma in 2004. He has been married since 2013. He has an 11-year-old child and an adult stepchild. (Item 2)

In the SOR, the Government alleged that Applicant failed to timely file, as required, his federal income tax returns for tax years 2016, 2017, 2018, 2019, 2020, and 2021, and that he had not yet filed his 2019 through 2021 federal income tax returns as of the date of the SOR. It also alleged that same information with respect to his state income tax return filings. Finally, it alleged that he had a delinquent credit-card account in the approximate amount of \$2,262. In the Answer, Applicant denied the SOR allegations concerning his income tax return filings and referenced tax account transcripts he attached. He admitted the allegation regarding his delinquent credit-card account without additional comment. His admission is incorporated in my findings of fact. Despite his denials, all the SOR allegations are established by the Government's exhibits included with the FORM. (Items 1-6)

Applicant filed his late 2016, 2017, 2018, and 2019 federal and state income tax returns between May 2023 and November 2023. He filed his delinquent federal income tax returns for the 2020 and 2021 tax years in March 2024. He filed his delinquent state income tax returns for the 2020 and 2021 tax years in May 2024. He filed these income tax returns after he certified his security questionnaire in September 2022 (SF 86) and after he discussed these filing failures with a DOD investigator during his January 2023 security interview (SI). For several tax years, he waited until after he had received and responded to interrogatories regarding these missing income tax returns from both the Department of Defense Counterintelligence Security Agency Consolidated Adjudication Services (DCSA CAS) and Department of Defense Office of Hearings and Appeals (DOHA) Department Counsel. (Items 2-4)

Applicant timely filed his federal and state income tax returns for the 2022 tax year. He provided documentary evidence of these tax return filings. He claimed these income tax returns were late because he did not have the required paperwork, and in the case of the 2016 tax year, because he and his wife filed a lawsuit regarding her trust fund, and because they had to relocate because of a natural disaster. He also claimed that he could not file income tax returns for subsequent tax years after failing to file previous ones. He claimed that he hired a CPA to assist him with filing these income tax returns. (Items 2-4)

There is no evidence in the record that Applicant resolved the delinquent credit-card account for \$2,262. The account has been delinquent since 2019. During his January 2023 interview with a DOD investigator, he claimed that he would contact the creditor that month to try to make payment arrangements, but there is no evidence that he did so. He claimed he fell behind on this credit card when he had to sell his home at a loss in order to relocate, presumably because of the natural disaster that he referenced in relation to his failure to file income tax returns. (Items 2, 4-6)

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:

- (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.

Applicant had a delinquent credit-card account in the amount of about \$2,000. He failed to timely file his federal and state income tax returns for the 2016 through 2021 tax years, as required. The evidence is sufficient to raise the above disqualifying conditions.

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;

(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.

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 and 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).

While Applicant has now filed his late federal and state income tax returns, he only did so after being put on notice that these failures might jeopardize his ability to obtain a security clearance. This timing causes me to question whether he would follow well-established rules if his personal interests were not affected, and therefore casts doubt on his reliability, trustworthiness, and good judgment. He has not provided evidence that he has resolved his delinquent credit card. Therefore, his financial issues are ongoing. AG ¶ 20(a) does not apply.

Applicant claimed that a natural disaster caused his failure to timely file his federal and state income tax returns for the 2016 tax year. He also claimed that it caused him to fail to pay his delinquent credit card. A natural disaster is a circumstance largely beyond his control, but for AG ¶ 20(b) to apply, he must also show he acted responsibly under the circumstances. By waiting from 2016 until 2023 to file his 2016 income tax returns, and not attempting to resolve his delinquent credit card, he has not met this burden. Moreover, waiting to file any of the relevant income tax returns until well after his security interview, interrogatories, and after the SOR was issued (for some of them) is neither acting responsibly under the circumstances nor acting in good faith. AG ¶¶ 20(b) and 20(d) do not apply.

Applicant has now filed all his delinquent income tax returns. AG ¶ 20(g) has some applicability.

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. While Applicant has now resolved his delinquent income tax filings, he has an unresolved delinquent debt that has been delinquent since 2019. There is no evidence in the record that he has made any effort to resolve it. Based upon the timing of the resolution of his delinquent income tax filings, I question whether he would be willing to follow well-established rules and requirements when he does not believe that his personal interests are at stake.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude that 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.

Benjamin R. Dorsey
Administrative Judge