



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



In the matter of:)	
)	
)	ISCR Case No. 23-01281
)	
Applicant for Security Clearance)	

Appearances

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

10/30/2024

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On September 14, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. 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 effective June 8, 2017 (AG).

Applicant answered the SOR, and he requested a hearing before an administrative judge. His SOR answer included attachments (SOR Answer Atch) that were not objected to by Department Counsel. On June 5, 2024, Department Counsel amended SOR ¶ 1.f by alleging additional years (2016, 2018, 2019, 2020, 2021) that

Applicant failed to timely file his state income tax returns (Hearing Exhibit (HE) III). Applicant failed to respond to the amendment before his hearing, but he admitted to the amended language at his hearing.

The case was assigned to me on May 2, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 28, 2024, and the hearing was convened as scheduled on July 16, 2024, using the video capabilities of the Microsoft Teams platform. The Government offered exhibits (GE) 1 through 9, which were admitted into evidence without objection. The Government's exhibit list and discovery letter were marked as HE I and II. The Government also presented a demonstrative exhibit, which was marked as HE IV.

Applicant testified but did not offer any exhibits at his hearing. The record was kept open until August 16 2024, to allow him to submit additional evidence. He submitted AE A-D, which were admitted without objection. DOHA received the hearing transcript (Tr.) on July 24, 2024.

Findings of Fact

Applicant admitted all the SOR allegations with explanations. After a review of the pleadings and evidence, I make the following findings of fact.

Applicant is a 63-year-old employee of a defense contractor. He began working for his current employer in September 2018. He is a computer-based trainer. He retired from the U.S. Army in 2018, after serving 32 years in the Army National Guard, the Army Reserve, and on active duty. He deployed to Iraq in 2010. He retired as a lieutenant colonel with an honorable discharge. He receives disability income from the Department of Veterans Affairs (VA). His holds a master's degree. He is married (since 1981) and has two adult sons. He also had a person who lived with his family that he considered "like a son" (JH), but who was not legally adopted. (Tr. at 6, 29-30, 37, 44-45, 47-48; GE 1)

The SOR alleged that Applicant filed a Chapter 7, bankruptcy in about 1986 that resulted in a discharge of his debts in 1987. (SOR ¶ 1.b) It also alleged that Applicant filed a Chapter 13 bankruptcy in about 1998 that resulted in a resolution of his debts in 2001. (SOR ¶ 1.a)

The SOR further alleged that Applicant owed delinquent federal income taxes in the approximate amount of \$10,385 for tax years 2015, 2016, and 2019 (SOR ¶ 1.c); that he owed delinquent state income taxes in the approximate amount of \$5,650 for tax years 2015 and 2019-2021 (SOR ¶ 1.d); that he failed to timely file his 2015-2018 federal income tax returns (SOR ¶ 1.e); and that he failed to timely file his 2015-2021 state income tax returns (SOR ¶ 1.f).

Bankruptcies

Applicant testified that he did not remember much about the bankruptcies because they occurred so long ago. He admitted that he filed both actions. Concerning the 1986 Chapter 7 bankruptcy, he believes he was young and unwise with his finances back then. He also had a high interest rate home loan (15%), which made it difficult to keep up with his bills and led to him filing the bankruptcy. The 1998 Chapter 13 bankruptcy was a different story. This was necessitated because his wife became seriously ill, causing her to be unable to work, so they incurred significant medical bills. Applicant decided that filing a Chapter 13 bankruptcy and making the payments under the plan was the best course of action. He has not filed another bankruptcy since 1998. (Tr. at 35, 75-77; GE 7-8)

Federal and State Income Tax Issues

Applicant admitted that he failed to timely file his federal income tax returns for tax years (TY) 2015, 2016, 2017, and 2018. He also admitted that he failed to timely file his state income tax returns for TYs 2015, 2016, 2017, 2018, 2019, 2020, and 2021. He gave two reasons for his dilatory tax return filing history. The first reason was that in 2015, JH, who he considered a son, passed away. The second reason was that in 2016 his father passed away. He admitted that he was able to perform his military duties during the time he was grieving the loss of JH and his father. He admitted that he ignored his tax issues until about 2019 when he started communicating with the taxing authorities. He did not use a tax professional when preparing his 2015-2018 federal tax returns or his 2016-2021 state tax returns. (Tr. at 37-38, 56; GE 2, pp. 19-64, 69-85) The details of his filings for these returns are as follows:

<u>Fed/State</u>	<u>TY</u>	<u>Date Prepared</u>	<u>Date mailed/received</u>	<u>Timely/Late</u>
Fed	2015	Unknown	5-16-2022	L
Fed	2016	Substitute Return	7-29-2019	L
Fed	2017	Substitute Return	7-20-2020	L
Fed	2018	Unknown	3-08-2021	L
State	2015	Unknown	8-12-2024	L
State	2016	Unknown	8-12-2024	L
State	2017	8-29-2023	8-13-2024	L
State	2018	5-14-2020	Between 5-14-2020 & 9-20-2023	L
State	2019	5-14-2020	8-14-2024	L
State	2020	8-30-2023	8-14-2024	L
State	2021	8-30-2023	Between 8-30-2023 & 9-20-2023	L

(Tr. at 55; GE 2, pp. 19-64, 69-85; AE B; SOR Answer Attch)

Applicant claimed that his federal returns became complicated after the IRS filed a substituted tax return for him in 2016 and erroneously listed his filing status "single" rather than "married filing jointly." (Tr. at 39) His tax payments are reflected below:

Fed/State	TY	Current Amount Owed	Payment Date
Fed	2015, 2016, 2018	\$7,433	\$300 Monthly Payment plan from November 2022-current through August 2024
State	2015, 2019-2021	\$0	Payments: August 2024

He claims that his 2022 and 2023 federal and state tax returns were timely filed and he does not owe taxes for those years. (Tr. at 53-53; AE B-D; SOR Answer Atch)

Applicant offered a personal financial statement showing his income sources, his monthly expenses, and his monthly debt payments. His monthly remainder is approximately \$2,000. He admitted that he purchased a \$55,000 truck in 2020 and a \$69,000 recreational vehicle in 2023, when he had yet to address some of his tax issues. (Tr. 80, 82; AE A)

Policies

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 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, these guidelines are applied 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(a), 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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

AG ¶ 18 expresses the security concern for financial considerations:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and the following potentially applies:

(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 filed for bankruptcy relief in 1986, under Chapter 7, and in 1998, under Chapter 13. His debts were resolved each time. Applicant failed to timely file his 2015-2018 federal tax returns and his 2015-2021 state tax returns. He was delinquent on payment of his 2015-2016, and 2019 federal tax debt, and his 2015, 2019-2021 state

tax debt. The record evidence supports all the SOR allegations. I find the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

(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; 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's bankruptcies are over 20 years old and would otherwise be mitigated by time, except for Applicant's inaction toward filing his federal and state tax returns and timely paying the taxes owed. AG ¶ 20(a) does not apply.

Applicant's reasons for not filing his federal and state tax returns and paying the amounts owed to each in a timely manner were not matters beyond his control. While the loss of family member is always tragic, and many people suffer those events, it is not an excuse to forego our responsibilities as citizens to file tax returns and pay taxes in a timely manner.

Applicant has now filed all this federal income tax returns. I note that all of these returns were filed at least two years after their due dates. The same can be said for the filing of his state tax returns, with several years not being filed until August 2024. Timely filing his yearly tax returns and paying what he owed was not beyond Applicant's control and shows irresponsibility on his part. He has paid all of his delinquent state tax debt and documented making continuous payments toward his federal tax debt since November 2022. He receives some mitigation credit for those actions. However, his overall inaction toward his tax responsibility over a number of years shows a lack of reliability, trustworthiness, and good judgment. AG ¶ 20(b) does not apply and while AG ¶ 20(g) is applicable, it does not overcome concerns resulting from Applicant's inaction with his tax issues.

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 the 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's military service, including his deployment, and the loss of JH in 2015 and his father in 2016. However, his inaction in handling of his tax issues over a multi-year period causes me to question his trustworthiness, reliability, and good judgment.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the 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.f:	Against Applicant

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 a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge