



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



In the matter of:)
)
) ISCR Case No. 23-01692
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro Se*

09/24/2024

Decision

CURRY, Marc E., Administrative Judge

Although Applicant's financial problems were caused, in part, by circumstances beyond his control, he has presented insufficient evidence to substantiate any efforts to resolve them. Under these circumstances, Applicant failed to mitigate the financial considerations security concerns. His application for a security clearance is denied.

Statement of the Case

On October 24, 2023, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudications Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DCSA CAS took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017.

On November 7, 2023, Applicant answered the SOR. He admitted all of the allegations except subparagraph 1.d and 1.h, and requested a decision based on the evidence on file rather than a hearing. On February 6, 2024, Department Counsel

prepared a File of Relevant Material (FORM), setting forth the Government's arguments against Applicant's security clearance-worthiness. The FORM contains eight attachments, admitted into the record and identified as Item 1 through Item 8.

Applicant received a copy of the FORM on February 29, 2024. He was given 30 days to file a response. On March 3, 2024, Applicant responded to the FORM, whereupon the case was assigned to me on April 28, 2023.

Findings of Fact

Applicant is a 52-year-old married man with five adult children. He is a high school graduate, and he has been working for a defense contractor as a security guard since 2022. (Item 5 at 3)

Applicant failed to file his federal and state income tax returns for tax years 2021 and 2022, as alleged in SOR subparagraph 1.a, and he is indebted for delinquent federal income taxes in the approximate amount of \$43,000 for tax years 2015 through 2020, as alleged in subparagraph 1.b. (Item 2) He admits that he incurred these tax debts because "for many years [he] live[d] beyond [his] means and lived for the day." (Item 2 at 1) In October 2020, Applicant arranged a payment plan with the Internal Revenue Service (IRS) to begin satisfying these delinquencies. (Item 5 at 4) He made monthly \$200 payments, as agreed, through January 2022. He was unable to finish executing this plan after having financial problems related to medical issues his wife began experiencing. In early 2022. These financial problems were compounded when he suffered two heart attacks, in February and March 2023, that resulted in several months of unemployment while he recovered. (Item 5 at 4)

In October 2023, Applicant retained a tax law firm to help him resolve his income tax delinquencies. His tax advisors have obtained a protective hold from the IRS on his account while they help him resolve his tax delinquencies. (Item 2 at 2) In October 2023, when Applicant retained the tax advisors, his IRS tax balance was approximately \$28,500. (Item 2) Approximately five months later, Applicant, in his response to the FORM, said that he was working toward satisfying his delinquent federal and state income taxes, but provided no proof of any payments, or proof that he had filed the outstanding state and federal income tax returns, or had paid down any of the outstanding delinquencies. (Reply, dated March 3, 2024)

In addition to tax delinquencies, the SOR alleges delinquent consumer accounts, totaling approximately \$2,200. Applicant denies the debts alleged in subparagraphs 1.d and 1.h, totaling approximately \$1,300. (Item 2 at 2) He provided no evidence substantiating the basis of his denials. As for the remaining consumer debts, he provided no evidence of what, if anything, he is doing to resolve them.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v.*

Egan, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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 ¶ 1(d) 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, 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 to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline F: Financial Considerations

Under this concern, "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." (AG ¶ 18)

Applicant's history of delinquent debts, including federal income tax delinquencies, and his failure to file federal and state income tax returns triggers the application of AG ¶ 19(a), "inability to satisfy debts," AG ¶ 19(c), "a history of not meeting financial obligations," and AG ¶ 19(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's financial problems were caused, in part, by medical problems that he and his wife experienced between early 2022 and March 2023 that impacted their ability to pay their bills. Conversely, Applicant readily acknowledged that several years of frivolous spending, predating the health problems, contributed to the financial problems. Moreover, Applicant presented nominal evidence of what he is currently doing to resolve these debts. Specifically, his contention that he is paying down some of his debts is unsupported by record evidence, and the basis of the debts he disputes are unsubstantiated by record evidence. Under these circumstances, neither AG ¶ 20(b), "the conditions that resulted in the financial problem were largely beyond the person's control ... and the individual acted responsibly under the circumstances," nor AG ¶ 20(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 or provides evidence of actions to resolve the issue," applies.

Applicant hired a tax law firm to help him resolve his tax delinquency. However, he did not provide evidence of any payment plan they helped him develop, or any progress he has made with their help. Under these circumstances, the first prong of AG ¶ 20(c) applies (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), but the second prong of AG ¶ 20(c) does not apply. (... there are clear indications that the problem is being resolved or is under control) is inapplicable. In sum, Applicant has failed to mitigate the financial considerations security concerns.

Whole-Person Concept

In reaching this decision, I considered the whole-person factors and they do not warrant a favorable conclusion.

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

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge