



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



In the matter of:)
XXXXXXXXXX) ISCR Case No. 23-02933
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

02/18/2025

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant has not provided evidence sufficient to mitigate the national security concern arising from his problematic financial and federal income tax history. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his security clearance application (SCA) on September 16, 2021. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on January 12, 2024, detailing security concerns under Guideline F, financial considerations. The DOD CAF acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

On March 27, 2024, Applicant submitted an undated answer to the SOR (Answer) and elected a decision on the written record in lieu of a hearing by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). Department Counsel submitted the Government's file of relevant material (FORM) on October 7, 2024, including

documents identified as Exhibits (Exs.) 1 through 9. ("Exhibits" are synonymous with the FORM's "Items" which are labeled "Exhibits.") DOHA sent Applicant the FORM on October 21, 2024, which he received on November 4, 2024. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM. The SOR and the Answer are the pleadings in the case. (Exs 1 and 2, respectively.) Exs. 3 through 9 are admitted without objection. The case was assigned to me on February 4, 2025.

Findings of Fact

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

Applicant is 47 years old, married (July 2014), and has an adult stepdaughter and a 15-year-old daughter. He is a high school graduate and has one and a half years of college credit. He reported no periods of unemployment but reported part-time employment from September to December 2019. Since February 2016, he has worked for a defense contractor. (Ex. 3.)

Under Guideline F, the SOR alleged that Applicant: (1) has 23 delinquent consumer loans totaling about \$34,863; and (2) failed to file federal income tax returns for tax years 2018, 2020, and 2021. (Ex. 1.) He admitted those allegations with no explanations. (Ex. 2.) The SOR consumer debt allegations are supported by the credit reports. (Exs. 4-7.) The allegations of failures to file federal income tax returns are supported by Internal Revenue Service (IRS) tax transcripts. No taxes were due for those tax years. (Ex. 8.)

Consumer Accounts

In Applicant's September 2021 SCA, he stated that the financial issues began in 2019 and 2020. He answered questions about his delinquent consumer accounts as follows, with minor variations:

Experienced financial hardship due to spouse losing job in 2019. This led to me becoming the sole income provider for the household. Spouse and I separated for a short period of time in 2019, and this further exacerbated the situation. Due to being the sole income and challenges arising from current COVID 19 pandemic, debt became delinquent

Found this issue while looking through current credit report. Report stated the original account is now in collections. I am trying to get information from collection agency to make sure the debt and amount are valid.

In contact with collection agency in order to try and get debt validation information as well as to make sure the amount listed as

delinquent on credit report is accurate. Once I receive information, I will develop a plan in which to set up a monthly repayment amount. (Ex. 3 at 52-58.)

In Applicant's December 20, 2021 personal subject interview (PSI), he was queried about his 22 consumer debts. For seven of them, he reported he was not sure what the accounts were for but he would look into them. For 11 of them, he reported that he would pay them off in February 2022. At the time of his PSI, he was expecting a Workmen's Compensation settlement in February 2022 (amount not stated). (Ex. 9 at 99-103)

Taxes

In Applicant's SCA, he reported only *failure to pay* 2016, 2017, and 2019 taxes, not a failure to file tax returns, and stated: "Unable to pay taxes due at time of filing." For each of those tax years, he answered as follows:

Had payment arrangement set up [with the IRS] and was making payments, but then due to the unforeseen circumstance of spouse losing employment and the COVID pandemic, I have been unable to make payments. Spoke to agent on phone about situation. I am receiving a worker's compensation settlement which will be used to resolve past due balance in full. (Ex. 3 at 49-50.)

In his PSI, Applicant addressed his failure to pay taxes (not alleged here). Some of his interview, however, may be relevant in this failure to file case. For example, he reported that his spouse quit her job in April 2018 to care for her injured brother. That made Applicant the sole provider. In addition, he and his spouse separated briefly (May 2019) but soon reunited (August 2019). In that PSI, he did not address any failures to file returns for tax years 2018, 2020, or 2021, the years alleged in the SOR. (Ex. 9 at 99.)

In his PSI, Applicant addressed his failure to pay taxes, which was not alleged in the SOR, but he did not address any failures to file returns for tax years 2018, 2020, or 2021, the years alleged in the SOR. He reported that his spouse quit her job in April 2018 to care for her injured brother, which made Applicant the sole provider. In addition, he and his spouse separated briefly in May 2019, but soon reunited in August 2019. (Ex. 9 at 99.)

Law and Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, "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).

The adjudicative 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(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. A2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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 as to potential, rather than actual, risk of compromise of classified information.

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 potentially applicable in this case:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file . . . annual Federal . . . income tax returns as required.

The SOR consumer debt allegations are established by Applicant's admissions and his credit reports. The SOR failures to file tax return allegations are established by his admissions and the IRS tax transcripts. AG ¶¶ 19(a), (c), and (f) apply. The next inquiry is whether any mitigating conditions apply.

Guideline F 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;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment . . . unexpected medical emergency . . .), 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 . . . and is in compliance with those arrangements.

Applicant stated that his financial problems began in 2019 and 2020. That is not that long ago. His delinquent debts are not infrequent. They remain delinquent on his most current credit reports. Thus, they are recurring. Mitigating condition AG ¶ 20(a) does not apply.

Mitigating condition AG ¶ 20(b) has two elements. First, an applicant's financial problems must be caused by conditions "largely beyond" his control. Second, an applicant must have acted "responsibly under the circumstances." Applicant has stated a number of conditions bearing on his financial problems. For example, his spouse had to quit her job in April 2018 to care for her brother. He also reported that his spouse lost her job in 2019. As a result, Applicant became the sole provider at a time when his children were seventeen and nine years old. He also cited the COVID-19 pandemic, which just followed the advent of his financial problems. Loss of employment and unexpected medical emergencies are expressly noted in AG ¶ 20(b) as being largely beyond an applicant's control. Thus, the first element is satisfied.

The next question is whether Applicant acted responsibly when faced with those adverse circumstances. When interviewed about his consumer debts, he repeated several responses. First, he was not sure what the accounts were for but would look into them (seven times). Second, he would pay them off by February 2022 (presumably with the proceeds from a Workmen's Compensation settlement) (11 times). Third, in his SCA, he said he would develop plans for monthly repayments (six times). If he followed through on his second and third promises and sufficiently documented them here, he could have satisfied the second element of AG ¶ 20(b). But he did not do so, and therefore AG ¶ 20(b) does not apply. For the same reasoning, AG ¶ 20(d) does not apply.

At its heart, AG ¶ 20(g) here would require an arrangement with the appropriate tax authority (the IRS) for Applicant to belatedly file his income tax returns for tax years 2018, 2020, and 2021. There is no such arrangement here, so this mitigating condition does not apply.

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.x:

Against Applicant

Conclusion

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

Philip J. Katauskas
Administrative Judge