



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



In the matter of:

ISCR Case No. 17-01432

Applicant for Security Clearance

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

07/03/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On July 31, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on August 14, 2017, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on November 15, 2017. He was afforded an opportunity to file objections and submit material in

refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 8. Applicant did not provide a response to the FORM, object to the Government's evidence, or submit additional documents. Items 1 through 8 are admitted into evidence. The case was assigned to me on February 13, 2018.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a through 1.g. He denied the allegations in SOR ¶¶ 1.h through 1.q. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 64 years old. He earned a bachelor's degree in 1976. He married in 1974 and has children ages 27, 25, and 19 years old. He served as a military officer from 1976 to 1980 and was honorably discharged. Applicant disclosed in his November 2015 security clearance application (SCA) that from August 2005 to September 2008 he was employed by a private company. In October 2008, he was given a severance package when his employer reduced its workforce. He indicated that from November 2008 until December 2009 he was unemployed and worked on writing a book and preparing himself to run for public office. His wife was employed, and they lived off of her income during this period. From January 2010 to June 2010 he worked as a private consultant. From July 2010 until October 2015, Applicant was unemployed and was concentrating on his public office campaign. He has been employed by his present employer, a federal contractor, since November 2015.¹

The debts alleged in the SOR are corroborated by Applicant's admissions, credit reports from January 2016 and March 2014, and tax transcripts. Applicant disclosed in his December 2015 SCA that he failed to file his 2009, 2010, and 2011 federal and state income tax returns. He indicated he paid the approximately \$10,000 he owed in 2014. He did not disclose he failed to timely file his 2014 federal and state income tax returns in his SCA. His explanation on his SCA for failing to file the 2009, 2010, and 2011 returns was "complex filing due to investments."² Applicant's tax transcripts corroborate he was required to file federal and state income tax returns for these years.³

The SOR alleged and Applicant admitted that he failed to timely file federal and state income tax returns for tax years 2009, 2010, 2011, and 2014, and he failed to timely pay taxes for the same years. Applicant was interviewed by a government investigator in May 2016. He told the investigator that from July 2010 to October 2015, he worked as a volunteer on political campaigns. His family relied on severance packages that he and his

¹ Items 3, 4.

² Items 3, 4, 5, 6, 7, 8. Any derogatory information that was not alleged in the SOR, will not be considered for disqualifying purposes, but may be considered when making a credibility determination, in the application of mitigating conditions, and in the whole-person analysis.

³ Items 7, 8.

wife received from previous employers. He told the investigator that none of his financial problems were due to this period of unemployment, but instead dated back prior to 2008 or were related to tax issues. He explained that his failure to file his income tax returns was because he and his wife had extensive investments in real estate, stocks provided to them by previous employers, and stocks purchased on the open market. Because of the complicated aspect of his tax returns, he sought assistance from the IRS, but was unhappy with its responses. No further explanation was provided. At some point, the IRS audited his tax returns from 2000 to 2008 and disallowed deductions for those tax years resulting in significant tax liabilities.⁴

Numerous federal tax liens were entered against Applicant. He provided IRS documents showing the federal tax lien entered December 2012 (SOR ¶ 1.k-\$9,334) and two liens entered in March 2013 (SOR ¶ 1.j-\$208,687) were released in August 2014. Documents were not provided to verify the status of tax liens entered in May 2013 (SOR ¶ 1.i-\$394,122), October 2011 (SOR ¶¶ 1.l-\$71,406 and 1.m \$35,279); May 2011 (SOR ¶ 1.n-\$839,076); and April 2006 (1.o-\$181,926). An IRS transcript for tax year 2014 shows a tax lien entered in March 2017 in the amount of \$245,245. No document was provided to show it is being paid.⁵

Applicant told the government investigator that his tax liens were released after he satisfied all tax debts in 2014, and he had documentation verifying it. He told the investigator he was unsure why the tax liens remained on his credit report, but intended to investigate and resolve them. He said he satisfied the tax liens with money withdrawn from his wife's and his Individual Retirement Accounts (IRA), which created the 2014 tax consequences. He intended to pay this debt through the future sale of his home. Verifying documents were not provided.⁶

State tax documents from September 2016 show taxes owed for 2014 are \$14,112. No documents were provided to show Applicant paid them. I am unable to determine from the state tax documents provided if the state tax liens in SOR ¶ 1.g (\$10,284) and ¶ 1.h (\$50,481) were released.⁷

Applicant also disclosed in the SCA that two condos he purchased around 2000 were in the process of being foreclosed.⁸ In his SCA, he stated:

These properties are in the process of being foreclosed as a result of my unemployment. As a result, the bank holding and company filed suit and

⁴ Item 4.

⁵ Item 7.

⁶ Item 4.

⁷ Item 8.

⁸ Item 3.

appropriately won the [judgment], so that the foreclose proceedings can be concluded.⁹

He further stated: “We have been working with the banks to determine how best to handle this property going back to the bank.”¹⁰

During his background interview with the government investigator in May 2016, Applicant stated that the debts in SOR ¶¶ 1.d (\$160,295), 1.e (\$65,771) and 1.f (\$111,507) related to mortgages owed for the condos. When he purchased them, he secured mortgages in the total amount of approximately \$800,000. In 2008, when his employer downsized, and he no longer was working, he could not pay the monthly mortgage payments. He contacted the mortgage company and attempted to have it foreclose on the properties. Due to the market, it chose not to. Applicant told the investigator that he had not made payments on the accounts since 2008. In 2012, the parent company of the mortgagor obtained a civil judgment against Applicant holding him to the original terms of the agreement. Applicant was not financially able to bring the accounts current or pay them. He intended to address the properties in 2016 after he satisfied his tax debts. He believed if he was unable to pay the amounts owed, the mortgage company would foreclose and Applicant would pay the deficiency from the proceeds of the future sale of his home. Applicant did not provide updated information to show if he has taken action on the debts.¹¹

Applicant denied the SOR allegations in ¶ 1.p (\$1,449), a medical account. He told the government investigator that he was waiting for his insurance to complete its processing to determine if there was a balance owed. He did not provide documentary confirmation the debt is resolved. He told the investigator he previously had disputed the account in SOR ¶ 1.q (\$181) owed to a telecommunications company, but decided to resolve it in 2015. He did not provide verification of the resolution.¹²

Policies

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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 suitability 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

⁹ Item 3.

¹⁰ Item 3.

¹¹ Items 3, 4.

¹² Items 2, 4.

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." 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. Directive ¶ E3.1.15 states 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.

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

The security concern relating to the guideline 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. 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (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 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 was required to and failed to timely file his 2009, 2010, 2011 and 2014 federal and state income tax returns. He failed to timely pay his 2009, 2010, 2011, and 2014 federal and state income taxes. He has numerous unpaid federal and state tax liens dating from 2006. He has other debts that are unresolved. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline 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;
- (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;
- (c) 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, and there are clear indications that the problem is being resolved or is under control;

(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.

Applicant failed to timely file his 2009, 2010, 2011, and 2014 federal and state income tax returns. He told the government investigator that he sought assistance from the IRS on a complicated tax matter, but was unhappy with its response. It is unknown why that disagreement with IRS prevented him from timely filing and paying income taxes for four years. Applicant provided documents to show some of the federal tax liens were released, but he failed to provide corroborating evidence that the remaining ones are released. His documents show he owes \$245,245 for his 2014 federal incomes taxes, which remain unpaid as of March 2017. He did not provide sufficient evidence that his state tax liens are released or that he paid and resolved the other debts alleged. There is insufficient evidence to conclude that his behavior is unlikely to recur. Applicant's failure to timely file and pay his income taxes liens and other debts cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant told the government investigator that his financial problems were not attributed to his almost five years of voluntary unemployment when he was working on political campaigns and pursuing his political aspirations. Rather, they were attributed to his disagreement with the IRS's advice and an audit for earlier tax years. He indicated he had real estate investments, company stocks, and stocks he purchased, which complicated his tax returns. Applicant chose not to work in 2008 and subsequently he was unable to pay the mortgages on two investment properties. The real estate market during that time and later years may have been down, but the evidence does not support a conclusion that his failure to make his mortgage payments was primarily due to market conditions. The evidence does not support that Applicant's financial problems were largely beyond his control or that he acted responsibly. AG ¶ 20(b) does not apply.

There is evidence Applicant resolved the federal tax liens in SOR ¶¶ 1.k and 1.j in 2014. AG ¶ 20(g) applies to these tax liens. Although these tax liens were released in 2014, Applicant's failure to timely pay these taxes, which then required action by the IRS to enforce, does not constitute a good-faith effort to resolve his legal obligations. There is insufficient evidence to show the numerous remaining federal and state tax liens have been released; that he has made arrangements with the IRS and the state tax authority regarding the liens and his 2014 federal and state tax liability; or that he has made payment arrangements for other outstanding debts. There is no evidence Applicant has received financial counseling. There are not clear indications that the problems are being resolved or under control, or that there are payment arrangements with the taxing authorities. AG ¶¶ 20(c) and 20(d) do not apply.

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 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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is a 64-year-old college educated veteran. He failed to file and pay his federal and state income taxes for several years. He incurred other debts that he has not resolved.

The DOHA Appeal Board has held that:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with these things is essential for protecting classified information. ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Someone who fails repeatedly to fulfill his or her legal obligations 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. 14-01894 at 5 (App. Bd. August 18, 2015). See *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).¹³

Applicant's history of non-compliance with a fundamental legal obligation to timely file and pay federal and state income taxes raises serious concerns. Applicant has more

¹³ ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).

than \$1.52 million dollars in federal tax liens; \$60,665 in state tax liens; and \$339,200 in other delinquent debts. He has not acted responsibly toward other financial obligations. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed 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 G:	AGAINST APPLICANT
Subparagraphs 1.a-1.i:	Against Applicant
Subparagraphs 1.j-1.k:	For Applicant
Subparagraphs 1.l-1.q:	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 security to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge