



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



In the matter of:

ISCR Case No. 17-02228

Applicant for Security Clearance

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: Ryan Nerney, Esq.

07/20/2018

Decision

GOLDSTEIN, Jennifer, Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F, Financial Considerations. His ongoing history of indebtedness, failure to timely file tax returns, and failure to pay federal income tax obligations in a timely manner, remain a concern. National security eligibility for access to classified information is denied.

Statement of the Case

On July 28, 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 in writing (Answer) on September 29, 2017, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on December 20, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on January 12, 2018, scheduling the hearing for February 7, 2018. The case was reassigned to me on January 30, 2018, and I convened the hearing as scheduled. The Government offered Government Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified on his own behalf and presented Applicant Exhibits (AE) A through BB, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on February 14, 2018. The record was left open for the receipt of additional evidence until March 12, 2018. On March 12, 2018, AE CC through AE II, were submitted and received without objection. The record then closed. On July 10, 2018, I contacted the parties to request a more legible copy of AE V. My email and the reply is marked Hearing Exhibit I. A new copy of AE V was provided by Applicant's counsel that same day. Department Counsel had no objection to appending the new copy of AE V to the original AE V. It was admitted.

Findings of Fact

Applicant admitted SOR subparagraphs 1.a through 1.g, and 1.i through 1.u, with explanations. He denied SOR subparagraph 1.h, in part. The SOR alleged that he was indebted to 14 creditors in the amount of \$979,865. Additionally, it was alleged that he failed to file federal and state tax returns for tax years 2009 to 2014, and that he failed to pay federal and state taxes due for 2009 to 2013. After a thorough and careful review of the testimony, pleadings, and exhibits, I make the following findings of fact:

Applicant is 44 years old, and is divorced. He was married from March 2002 to May 2011. He separated from his ex-wife in May 2010. He has full custody of his only child, age 12. He has worked for his employer, a government contractor, for the past year and a half. He has been gainfully employed for over 15 years, and has not experienced any periods of unemployment. (AE A; AE B; AE G; Tr. 18-21, 68-69.)

Applicant attributed his delinquent debt and tax problems to his ex-wife and her struggle with alcoholism. His ex-wife opened up a business in 2006. They used all available funds to help her start the business, including taking credit card advances. They also used credit cards to sustain monthly personal expenses. Applicant's wife developed a severe alcohol addiction. Through her negligence, she lost the business in 2010. Applicant later discovered that his wife had not been paying self-employment taxes. Further, she had no bank statements or receipts for her business. Applicant had to rebuild records from scratch to enable him to file both state and federal tax returns. His finances were also impacted negatively by the nationwide real estate market crash in 2010. (Tr. 22-28.)

During the course of his marriage, Applicant owned three properties, two of which became rental properties. He purchased property one (P1) in 2001 through a mortgage loan of \$140,000. He refinanced the loan several times. Currently, the property is subject to two mortgages. The primary mortgage is for \$154,767. The second mortgage, in the

amount of \$131,818, is currently under a workout agreement. He estimated that P1 is currently valued at \$327,000. It is occupied by renters. Applicant intends to sell P1 after it is vacated by the elderly renters that inhabit it. (AE S; Tr. 78-86)

Applicant purchased property two (P2) in 2004 for \$420,000. He refinanced P2 with the lender identified in SOR subparagraph 1.s, for \$480,000 in October 2005. After he moved out, he leased the property to tenants. In 2010 his tenants vacated the property, and Applicant could no longer rent the property for the amount of his mortgage payment. He defaulted on the mortgage and P2 was foreclosed upon. (Answer; GE 3; Tr. 78-86.)

Applicant purchased the third property (P3) in 2006. It was financed by two loans in the amounts of approximately \$327,000 and \$89,348. This was Applicant's residence until he experienced marital problems and moved out in 2010. After he vacated the property in May 2010, he could not afford to make the mortgage payment and pay his own living expenses. His ex-wife resided in the property until it was foreclosed upon, but she did not pay anything toward the mortgages. SOR subparagraph 1.k alleged a delinquent \$327,700 mortgage, which was the first mortgage on P3. It was foreclosed upon in 2012. (GE 3; Tr. 50-51.) The second mortgage for this property was alleged as delinquent in SOR subparagraph 1.r. It became delinquent in 2011. Applicant believes the second mortgage was also resolved through the foreclosure of P3. His credit report reflects this debt as a charged-off account. (Answer; GE 3; Tr. 78-86.)

SOR subparagraphs 1.a through 1.e alleged Applicant failed to file federal income tax returns, failed to pay federal income taxes, and that there were tax liens filed against him for his failure to pay those taxes. He failed to timely file his federal income tax returns for tax years 2009 through 2014. Three tax liens, documented on his September 2016 credit report, were filed against him as follows: \$3,611 for tax year 2013, released on April 27, 2016; a \$73,688 tax lien filed in December 2015;¹ and a \$1,150 tax lien filed February 2017. (GE 3.) Applicant presented IRS tax transcripts, dated February 2, 2018, which established his delinquent returns have been filed. His 2009 federal income tax return was filed in January 2012. He had an unpaid balance of \$48,462 from 2009. His 2010 federal income tax return was filed in March 2013. His 2011 and 2012 federal income tax returns were filed in February 2016. He had zero balances for tax years 2010 and 2011, but owed \$63 for 2012.² His 2013 and 2014 federal income tax returns were filed in January 2016. He owed \$15 for 2013 and nothing for 2014.³ He attributed his delinquent filings after his divorce to moving several times and to being a single parent. His 2015 and 2016 federal income tax returns were timely filed after obtaining valid extensions.⁴

¹ AE II documents that a \$19,948 tax lien filed on June 15, 2016, for tax year 2012 was released on February 14, 2018.

² AE O shows Applicant made a \$1,253 payment to the IRS to resolve a tax delinquency from tax year 2011. AE P shows Applicant made a \$21,913 payment for tax year 2012 on September 20, 2017. He paid the remainder of \$63 for tax year 2012 on February 2, 2018 (AE AA).

³ AE BB shows he paid the \$15 debt on February 2, 2018.

⁴ AE Q shows Applicant paid \$1,159 on February 11, 2017, for tax year 2015.

Applicant entered into an installment agreement in January 2018 to resolve his remaining federal tax debt through monthly payments of \$750, beginning in March 2018. In August 2017 he had agreed to an installment agreement with the IRS, but made no payments under that agreement. (GE 2; GE 3; AE N; AE O; AE P; AE Q; AE T; AE V; AE DD; Tr. 29-38, 72.)

SOR subparagraphs 1.f and 1.g alleged Applicant failed to file state tax returns from 2009 to 2014, and failed to pay state taxes from 2009 to 2013. Applicant admitted he failed to timely file his state tax returns. A printout of his state tax account summary, dated September 22, 2017, reflected that all delinquent state tax returns have been filed and that he has no remaining balance. His delinquent taxes were recouped by the state through involuntary garnishment of his pay. (AE L; Tr. 39-42.)

SOR subparagraph 1.h alleged that Applicant was indebted on a \$19,471 judgment filed against him in 2013. This debt was for a credit card that Applicant's wife used for her business. His wages are currently being garnished at the rate of \$600 per month by this creditor. He testified the balance of this debt is approximately \$23,900. He contacted the company to negotiate a settlement, but the company prefers to resolve the debt through garnishment. This debt is unresolved. (AE X; AE Y; GE 3; Tr. 42-48.)

SOR subparagraph 1.i alleged that Applicant was delinquent on a \$10,119 charged-off account. This was for another credit card that Applicant's ex-wife used for her business. Applicant testified that he has attempted to contact this creditor, but has not been able to reach the collection agent. This debt is unresolved. (Tr. 48-49.)

SOR subparagraph 1.j alleged that Applicant was delinquent on a \$92 collection account. This debt was for a home water-delivery service. Applicant's October 2017 credit report reflects this debt as paid with a zero balance. It is resolved. (AE T; Tr. 49-52.)

SOR subparagraph 1.l alleged that Applicant was delinquent on a \$61 collection account. This debt was for Applicant's home internet service. It became delinquent in February 2016. Applicant paid this debt on October 19, 2016. It is resolved. (GE 3; AE Z; Tr. 51-52.)

SOR subparagraph 1.m alleged that Applicant was delinquent on a \$37 collection account. This debt is the same as the debt alleged in SOR subparagraph 1.t. This debt was for a delinquent cable bill. Applicant produced a bank statement that showed this debt was paid in August 2017. It is resolved. (GE 3; AE R; Tr. 54.)

SOR subparagraph 1.n alleged that Applicant was delinquent on a \$90 collection account. Applicant produced a bank statement that showed this debt was paid in August 2017. It is resolved. (GE 3; AE R; Tr. 52-54, 75.)

SOR subparagraph 1.o alleged that Applicant was delinquent on a \$134 collection account. SOR subparagraph 1.p alleged that Applicant was delinquent to the same creditor on a \$487 collection account, which had the same account number as the debt

in subparagraph 1.o. Applicant's October 2017 credit report reflects this debt as paid with a zero balance. It is resolved. (GE 3; AE T; Tr. 55-59, 75.)

SOR subparagraph 1.q alleged that Applicant was delinquent on a \$7,027 collection account. Applicant testified that this debt was for a delinquent credit card. Applicant settled this debt in full on February 23, 2018, for a payment of \$1,756.87. It is resolved. (AE CC; Tr. 56-57.)

SOR subparagraph 1.u alleged that Applicant was delinquent on an \$11,677 charged-off account. This debt was for a credit card that Applicant's ex-wife used for her business. He does not dispute this debt and contacted the creditor to make payment arrangements, however he was told that the creditor was barred from collecting the debt. Applicant produced a letter from this creditor dated April 18, 2016, which reflects the creditor entered into agreements with the U.S. Consumer Financial Protection Bureau, state Attorneys General, and the Office of the Comptroller of the Currency to stop enforcement of judgment and cease collection. The credit reporting agencies were notified by this creditor to "not report our judgment." This debt is resolved. (AE U; AE EE; Tr. 62-64.)

Applicant signed a statement of intent, pledging to file his federal and state tax returns as required by law in the future. (AE E.) In August 2017, he completed online financial counseling offered by a nonprofit agency. (AE F.) His monthly budget reflects that he has a remainder of \$396 per month after his financial obligations are met. (AE H.) As of August 2017, he had \$45,152 in a business checking account. (AE I.) He also has an annuity valued at \$67,032, a 401(K) savings plan valued at \$4,554, and investments of \$65,323. (AE J; AE K.)

Applicant's former manager, co-workers, and friends wrote letters on his behalf. They attest to his dedication, trustworthiness, and reliability. Applicant is considered to be a conscientious asset by his colleagues. His 2017 performance evaluation reflects that Applicant meets and exceeds expectations. (AE C; AE D.)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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 AG ¶ 2 describing 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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.

Finally, 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 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 has a history of not meeting his financial obligations. He failed to timely file returns from 2009 to 2014, and pay his federal income tax obligations from 2009 to 2013, which resulted in three tax liens that were filed against him. He also had two homes foreclosed upon and numerous delinquent consumer accounts. There is sufficient evidence to raise substantial security concerns under the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from Applicant's 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;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; 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.

In Financial cases, the Appeal Board has held:

Even if an applicant has actually paid his debts or otherwise addressed his financial delinquencies, a Judge may still consider the circumstances underlying the debts for what they may reveal about the applicant's eligibility for a clearance. See, e.g., ISCR Case No. 16-02246 at 2 (App. Bd. Dec. 8, 2017). In evaluating a case under Guideline F, a Judge should consider the extent to which an applicant's circumstances cast doubt upon his judgment, self control, and other characteristics essential to protecting national security information. This obligation is rooted in the language of the Directive, which states that failure to meet financial obligations may indicate unwillingness to abide by rules and regulations, thereby raising questions about an applicant's ability to protect classified information. Directive, Encl. 2, App. A ¶ 18. See ISCR Case No. 15-01737 at 3 (App. Bd. Feb. 14, 2017).⁵

In the instant case, Applicant experienced financial problems that were due to events beyond his control, including his ex-wife's alcohol addiction, her business failure, and their subsequent divorce. He also experienced financial problems as a result of the nationwide economic crisis in 2010. He had two properties foreclosed upon due to these circumstances. However, all of those events took place prior to 2012. He admitted culpability after 2011, attributing his failure to address his delinquent tax returns and unpaid taxes to moving and the struggles of being a single parent.

Since 2012, Applicant has not acted reasonably or responsibly with respect to his delinquent debts and tax obligations. He is credited with filing his delinquent state and federal tax returns, resolving some of his delinquent federal taxes, and resolving the debts alleged in SOR subparagraphs 1.i, 1.j, 1.l, 1.m, 1.n, 1.o, 1.p (a duplicate of 1.o), 1.q, 1.t (a duplicate of 1.m), and 1.u. He has participated in financial counseling, which may improve his financial outlook in the future. He has amassed savings totaling over \$100,000. However, there are no clear indications that Applicant has mitigated his past and recent questionable financial decisions.

The timing of his federal income tax filings remains concerning, as does his remaining \$48,000 federal tax debt for tax year 2009; and his unresolved debts identified

⁵ ISCR Case No. 17-01383 (App. Bd. May 16, 2018).

in SOR subparagraphs 1.i and 1.h. His 2009 federal income tax return was filed in January 2012 and his 2010 federal income tax return was filed in March 2013. He indicated they were filed late because he had to reconstruct his wife's business records, a circumstance beyond his control. However, it is unclear why it took him until January and February of 2016 to file his 2011 through 2014 federal income tax returns. The record does not establish a rational connection between Applicant's circumstances prior to 2012, and his failure to have filed his tax returns after 2012. Applicant has repeatedly failed to fulfil this significant legal obligation. Further, while he has an offer in compromise to resolve his \$48,000 federal tax debt, he failed to demonstrate compliance with that arrangement at the close of the record.⁶ His state tax debt was resolved involuntarily, through garnishment; and he is currently subject to an involuntary garnishment for the \$23,000 consumer debt alleged in SOR subparagraph 1.h. The timing of his actions to resolve his tax obligations and his remaining delinquent debt do not establish Applicant has the requisite good judgment needed to possess a security clearance. AG ¶ 20(g) has limited application as he has filed all past-due taxes and has repaid his delinquent taxes for all but 2009. However, none of the above mitigating conditions provide full mitigation.⁷

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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 national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

⁶ Applicant resolved all other federal tax debts. I took into account his history of repaying those debts here. However, I also note that Applicant had an August 2017 offer in compromise with the IRS, but made no payment under that agreement. This debt has been owing since 2010, but Applicant has made little effort to address it.

⁷ SOR subparagraphs 1.j, 1.l, 1.m, 1.n, 1.o, 1.p (a duplicate of 1.o), 1.q, 1.t (a duplicate of 1.m), and 1.u are mitigated because they were resolved in good faith. AG ¶ 20(d) applies to them. Applicant fully resolved these debts to the satisfaction of the creditors. AG ¶ 20(b) mitigates the security concerns set out in SOR subparagraphs 1.k, 1.s, and 1.t. The foreclosures were a result of circumstances beyond Applicant's control and those debts are resolved.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is respected by his manager, colleagues, and friends. He performs well at work. He has fully satisfied eight small delinquent accounts. However, he repeatedly failed to fulfill his legal obligations. He did not begin to resolve his federal tax obligations for tax years 2012 through 2014 until tax liens were filed against him. His state tax debt was resolved involuntarily, through garnishment. His pay is currently subject to garnishment for an unresolved consumer account that was reduced to judgment. The record evidence leaves me with 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.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a:	For Applicant
Subparagraphs 1.b:	For Applicant
Subparagraphs 1.c:	For Applicant
Subparagraphs 1.d:	Against Applicant
Subparagraphs 1.e:	Against Applicant
Subparagraphs 1.f:	Against Applicant
Subparagraphs 1.g:	Against Applicant
Subparagraphs 1.h:	Against Applicant
Subparagraphs 1.i:	Against Applicant
Subparagraphs 1.j:	For Applicant
Subparagraphs 1.k:	For Applicant
Subparagraphs 1.l:	For Applicant
Subparagraphs 1.m:	For Applicant
Subparagraphs 1.n:	For Applicant
Subparagraphs 1.o:	For Applicant
Subparagraphs 1.p:	For Applicant
Subparagraphs 1.q:	For Applicant
Subparagraphs 1.r:	For Applicant
Subparagraphs 1.s:	For Applicant
Subparagraphs 1.t:	For Applicant
Subparagraphs 1.u:	For 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 access to classified information. National security eligibility is denied.

Jennifer I. Goldstein
Administrative Judge