



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



In the matter of:)
)
) ISCR Case No. 24-00941
)
Applicant for Security Clearance)

Appearances

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

02/27/2025

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant's handling of his state and federal income taxes resulted in unmitigated Guideline F (financial considerations) security concerns. Eligibility for access to classified information is denied.

History of the Case

On July 11, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F. (Item 1) The 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 (AG) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on August 3, 2024, and requested a decision based upon the administrative record (Answer). (Item 3) A copy of the file of relevant material (FORM), dated September 3, 2024, was provided to Applicant by letter on September 4, 2024. Department Counsel attached as evidence to the FORM Items 1 through 5. Applicant received the FORM on September 9, 2024, and he was afforded a period of 30

days to file objections and submit material in refutation, extenuation, or mitigation. He responded twice to the FORM in a timely manner. On November 12, 2024, the case was assigned to me. I marked the documents provided by Applicant in his FORM responses as Applicant Exhibits (AE) A (pages 1-35) and AE B (pages 1-32). Department Counsel did not object to these documents, nor did Applicant object to any of the Government's documentation in his response to the FORM. Both parties' documentation is admitted into evidence.

Findings of Fact

Applicant, 31, lives with his parents, has never been married, and has a six-year-old son. He received a high school diploma in 2010 and completed a 30-week welding program in 2014. He has worked as a welder for his current employer since September 2022. This is his first application for a security clearance. (Item 3; Item 5)

The SOR alleged Applicant failed to file, in a timely manner, his federal and state income tax returns for tax years (TY) 2018 through 2022, and, as of the date of the SOR, they remained unfiled. In his Answer, he admitted both SOR allegations and indicated, "I have since provided documentation to show they are being filed." This documentation is discussed at length below. (Item 1; Item 2)

Applicant completed a security clearance application (SCA) in March 2023, and in response to questions regarding his tax history dating back seven years, he admitted to failing to file his federal and state income tax returns for TY 2018 through 2021. For both his federal and state income tax returns for TY 2018, 2019, and 2020, he indicated he "f[il]ed" but was currently working on resolving his unfiled returns. He estimated he owed between \$600 to \$800 for each of those tax years. For TY 2021, he was unable to file his federal and state income tax returns because he did not receive his tax documents from his employer. He estimated he owed \$1,800 for TY 2021 and planned "to take care of it." (Item 3)

In May 2023, Applicant was interviewed by a government investigator, and his unfiled federal and state income tax returns were discussed. He admitted his income tax returns for TY 2018 through 2021 remained unfiled and further disclosed his federal and state income tax returns for TY 2022 were also unfiled. In explanation of these issues, he stated that, prior to 2018, he used an individual to file his returns for him; however, the individual stopped preparing taxes at an unstated date, and he did not find or hire a new individual or company to file his returns. He stated he intended to gather his tax paperwork and hire help to file his returns by the fall of 2023. Starting in 2020, he was court-ordered to pay \$758 bi-weekly support for his son, and he failed to resolve his tax issues due to uncertainty as to how much it would cost and the demand of his child support obligation. (Item 5)

Applicant responded to CAS interrogatories in December 2024. In response to the request to provide federal and state tax account statements, he submitted tax account statements from the Internal Revenue Service (IRS) for only TY 2019 and 2021. Both statements reflect he had not filed income tax returns as of January 5, 2024. Additionally,

in his response to the interrogatories, he provided a budget, which showed a negative net monthly remainder of \$1,129. (Item 4)

In Applicant's Answer to the SOR, he provided copies of his federal income tax returns for TY 2019 through 2022, and his state income tax returns for TY 2018, 2019, 2020, and 2022. None of the return copies were dated nor signed. Cover letters accompanying each TY's returns reflected Applicant's signature and hand-written dates of July 28, 2024, for TY 2019 through 2022, and August 7, 2024, for TY 2018. Applicant claimed the following regarding his federal income tax obligations as of August 2024: TY 2018 (refund \$2,241); TY 2019 (owes \$1,397 + unknown amount of interest); TY 2020 (refund of \$3,680); TY 2022 (refund of \$2). He claimed the following regarding his state income tax obligations as of August 2024: TY 2018 (refund \$318); TY 2019 (refund \$136); TY 2020 (refund of \$162); TY 2022 (refund of \$286). He did not address his federal and state tax obligations for TY 2021. (Item 2)

In Applicant's response to the FORM, he provided updated copies of his federal income tax returns for TY 2019 through 2022, and his state income tax returns for TY 2018, 2019, 2020, and 2022. Each return copy reflected his signature and a date of September 11, 2024. He did not include documentation demonstrating the IRS and his state tax authority either received or accepted the returns. He did not provide proof of payments or a payment plan for his admitted TY 2019 federal income taxes. (AE A)

Applicant attributed his financial difficulties, in part, to his various arrests. Neither his arrests nor his admitted TY 2019 federal taxes were alleged in the SOR. The record reflected numerous other unalleged delinquent debts. These unalleged delinquent taxes and other debts and arrests will not be considered as disqualifying conduct, but they may be considered in determining whole-person analysis and applicability of mitigating conditions. Applicant provided documentation to demonstrate he resolved or was making payments toward several of the unalleged non-tax debts. (Item 3; Item 4; Item 5; AE B)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be 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, 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(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.”

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 the applicant or proven by Department Counsel.” The applicant 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

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 concern under Guideline F (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 a person might knowingly

compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The record evidence of Applicant's failure to file his income tax returns in a timely manner establishes the following disqualifying conditions under 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.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

(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 disclosed his failure to file his federal and state income tax returns for TY 2018 through 2021 in his March 2023 SCA. For TY 2018 to 2020, he admitted he, "[j]us(t) failed to file." He explained his employer did not provide him with his tax documentation for TY 2021. During his May 2023 interview with a government investigator, he indicated he also failed to file his federal and state tax returns for TY 2022. Additionally, in 2020, he was ordered to pay child support for his son, who was born in 2018.

Overall, Applicant failed to demonstrate he acted reasonably under these circumstances to address his unfiled tax returns. He was aware his unfiled tax returns

were a security concern as of March 2023, when he completed his SCA. The concern was highlighted during his subject interview in May 2023, and when he received the CAS interrogatories in December 2024. However, he did not attempt to file, hire a tax professional, or otherwise resolve his unfiled tax returns until after the SOR was issued in July 2024. Additionally, the documentation he provided in his Answer and in his response to the FORM did not sufficiently establish the date he filed his tax returns with the IRS and his state tax agency, or the date either entity received and accepted the returns.

Regarding the failure to file tax returns, the DOHA Appeal Board has commented:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established governmental rules and systems. Voluntary compliance with such rules and systems is essential for protecting classified information. ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002). As we have noted in the past, a clearance adjudication is not directed at collecting debts. See, e.g., ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). By the same token, neither is it directed toward *inducing an applicant to file tax returns*. Rather, it is a proceeding aimed at evaluating an applicant's judgment and reliability. *Id.* A person 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. Aug. 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).

ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016) (emphasis in original). See also ISCR Case No. 15-01031 at 4 (App. Bd. June 15, 2016) (citations omitted); ISCR Case No. 14-05476 at 5 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002)); ISCR Case No. 14-01894 at 4-5 (App. Bd. Aug. 18, 2015). The Appeal Board clarified that even in instances where an "[a]pplicant has purportedly corrected [his or her] federal tax problem, and the fact that [applicant] is now motivated to prevent such problems in the future, does not preclude careful consideration of [a]pplicant's security worthiness in light of [his or her] longstanding prior behavior evidencing irresponsibility" including a failure to timely file federal income tax returns. See ISCR Case No. 15-01031 at 3 & n.3 (App. Bd. Jun. 15, 2016) (characterizing "no harm, no foul" approach to an applicant's course of conduct and employing an "all's well that ends well" analysis as inadequate to support approval of access to classified information with focus on timing of filing of tax returns after receipt of the SOR).

In ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017) the Appeal Board reversed the grant of a security clearance, discussed how AG ¶ 20(g) applied, and noted:

The timing of the resolution of financial problems is an important factor in evaluating an applicant's case for mitigation because an applicant who begins to resolve financial problems only after being placed on notice that his clearance was in jeopardy may lack the judgment and self-discipline to

follow rules and regulations over time or when there is no immediate threat to his own interests. In this case, applicant's filing of his Federal income tax returns for 2009-2014 after submitting his SCA, undergoing his background interview, or receiving the SOR undercuts the weight such remedial action might otherwise merit.

In this case, Applicant has yet to demonstrate he filed his TY 2018 through 2022 federal and state income tax returns. Because there is no documentary proof he filed his returns, it remains unclear how much he may owe for these tax years, including his admitted TY 2019 federal taxes of at least \$1,397 for which he has yet to establish a payment plan. Mitigation under AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(g) was not established.

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 relevant 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 have incorporated my comments under Guideline F in my whole-person analysis. I conclude Applicant has not met his burden of proof and persuasion. He did not mitigate the financial considerations security concerns or establish his eligibility for a security clearance.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraphs 1.a – 1.b:

Against Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant's national security eligibility for access to classified information. Eligibility for access to classified information is denied.

CAROLINE E. HEINTZELMAN
Administrative Judge