



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



In the matter of:)
XXXXXX) ISCR Case No. 24-00658
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

01/08/2025

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant has not provided evidence sufficient to mitigate the national security concern arising from his delay in filing his federal and state income tax returns for tax years 2018 through 2022 and his failure to pay timely \$5,437 of federal income taxes. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his security clearance application (SCA) on April 4, 2023. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on May 23, 2024, detailing security concerns under Guideline F, financial considerations. The DOD 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.

Applicant submitted an answer to the SOR (Answer) on August 8, 2024 and elected a decision on the written record 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 September 4, 2024, including documents identified as Items 1 through 6. He received it on September 17, 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. (Items 1S and 1A, respectively.) Items 2 through 6 are admitted without objection. The case was assigned to me on December 6, 2024.

Findings of Fact

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

Applicant is 39 years old, never married, and has no children. He earned his bachelor's degree in May 2009. He reported two periods of unemployment. The first was from December 2012 to June 2014, after his employer was bought out. The second was from June 2020 to March 2021, after he was laid off due to COVID. Since February 2023, he has worked for a defense contractor. This is his first trip through the national security clearance process. (Item 2.)

Under Guideline F, the SOR alleged that Applicant: (a) failed to file federal income tax returns for the tax years 2018 through 2022 and; (b) failed to pay delinquent federal income taxes of \$5,437. (Item 1S ¶¶ 1.a and 1.b.) He admitted those allegations and stated that the returns for those tax years have been filed and that his current tax debt is \$5,063 which he makes payments on every month. (Item 1A ¶¶ 1.a and 1.b.) He did not provide any documents evidencing those filings or those payments.

Also under Guideline F, the SOR alleged that Applicant failed to file state income tax returns for tax years 2018 through 2022. (Item 1S ¶ 1.c.) He admitted that allegation and stated that the returns for those tax years are now currently filed. (Item 1A ¶ 1.c.) He did not provide any documents evidencing those filings.

In his SCA, for 2020 taxes, Applicant said: ‘I lost my job didn’t have the funds to pay because I had to take out of retirement.’ For 2021, he said: “Working to pay all years together. In the process of filing all taxes as we speak.” For 2022 he said: “Didn’t have the funds working on paying taxes now [sic]. I am working on filing these taxes.” (Item 2 at 34-35.) He also reported in his SCA that from September 2021 to October 2021, he traveled to a foreign country and spent six to ten days for tourism. (Item 2 at 25-26.)

In Applicant’s August 10, 2023 responses to interrogatories, he explained why he failed to file or pay his 2020 through 2022 state tax returns: “I didn’t file the taxes due to lost my job. I was laid off due to covid and didn’t have the finances at the time to pay the taxes and had to take full unemployment amount without any taxes being taken out which put me at a deficit.” (Emphasis added.) He attached his “Employer W2 Information” for 2019 through 2022. (Item 3 at 2, 8-11.) The interrogatories requested that he provide Internal Revenue Service (IRS) Tax Account Transcripts for tax years 2020 through 2022. They also provided instructions on how to obtain those Transcripts and enclosed IRS

Form 4506-T for that purpose. He did not provide the Transcripts requested. Instead, he included a blank Form 4506-T with his responses. (Item 3 at 2, 5-7.)

In his February 9, 2024 responses to interrogatories, he explained why he failed to file or pay his 2020 through 2022 *state taxes*: "I didn't file the taxes due to lost my job. I was laid off and didn't have the finances at the time to pay the taxes. I had financial strife during the covid years. All taxes for those years have now been filed with H&R Block." He attached his "Employer W2 Information" for 2020 and 2021. (Item 4 at 2-3, 8-10.) The interrogatories requested that he provide IRS Tax Account Transcripts for tax years 2020 through 2022. They also provided instructions on how to obtain those Transcripts and enclosed IRS Form 4506-T for that purpose. He did not provide the Transcripts requested. Instead, he included a blank Form 4506-T with his responses. (Item 4 at 2, 5-7.)

In Applicant's verified personal subject interview (PSI) conducted on May 24, 2023, he was asked who paid for his travel abroad for tourism in September 2021, if he did not have enough money to pay his taxes. The summary reported: He made the decision to use his money towards traveling instead of filing and paying his taxes with the plan to get to his taxes later. (Item 5 at 3.) The interrogatories requested that he provide IRS Tax Account Transcripts for tax years 2019 through 2022. They also provided instructions on how to obtain those Transcripts. He did not provide the Transcripts requested. He attached his "Employer W2 Information" for 2019 through 2022. (Item 5 at 8, 12-14.)

In response to the same interrogatories, Applicant's table showed his federal and state tax returns for tax years 2019 through 2021 were filed years late, in 2023 and 2024. His 2022 returns were filed only three days late. (Item 5 at 8-9.) His Personal Financial Statement (PFS) (all amounts are monthly) is inaccurate. He listed his Gross Salary as \$3,203.46 and Total Deductions of \$180.96. That yields \$3,022.50 of Total Income. But he arrived at \$4,386.08 as his Total Income. All subsequent calculations are based on this inaccurate Total Income. (Item 5 at 11.)

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).

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law that apply together with common sense and the general factors of the whole-person concept. An administrative judge must consider all available and 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, then 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 in seeking a favorable security decision.

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 condition is the only one applicable in this case:

- (f) failure to file . . . annual Federal, state, or local income tax returns . . . or failure to pay annual Federal, state, or local income tax as required.

The SOR's alleged unfiled federal and state income tax returns and Applicant's failure to pay federal income taxes, are established by Applicant's admissions. AG ¶ 19 (f) applies. The next inquiry is whether any mitigating conditions apply.

Guideline F 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 . . .), and the individual acted responsibly under the circumstances); 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.

I have considered mitigating condition AG ¶ 20(a). Applicant's federal and state income tax failures to file returns began with his 2018 returns, that is, in calendar year 2019. Those late filings continued until he belatedly filed his returns in 2023 and 2024. His failures to file did not occur that long ago. And they did recur. His financial inability to pay any taxes due does not excuse his failures to file returns. In addition, he only filed those returns *after his SCA was submitted in April 2023*. That undercuts the weight such untimely filings might otherwise merit. ISCR Case No. 15-06440 at 4 (App. Bd. Dec. 26, 2017). Finally, in three sets of interrogatories, he was requested for his relevant IRS Tax Transcripts. He was given express instructions on how to obtain those Transcripts. Yet he did not provide those Transcripts. His failures to file timely his federal and state income tax returns are not mitigated under AG ¶ 20(a).

As to Applicant's delinquent federal income taxes, I have considered mitigating conditions AG ¶¶ 20(b) and (g). AG ¶ 20(b) first requires that Applicant be confronted by circumstances that "were largely beyond [his] control." His loss of employment satisfies that requirement. The next requirement is that he have "acted responsibly" in addressing his loss of employment as it affected his federal income tax liability. He claimed that: (1) his debt is somewhat less than alleged in the SOR, and that; (2) he makes payments on that debt every month. He did not, however, provide any documentation evidencing that payment arrangement with the IRS or that he is in compliance with it. The Appeal Board has consistently required applicants to provide documentation evidencing actions taken to resolve financial problems, whether the issues are back taxes or other debts. See ISCR Case No. 19-02593 at 4-5 (App. Bd. Oct. 18, 2021); ISCR Case No. 19-01599 at 3 (App. Bd. Jan. 20, 2020). His delinquent federal income tax liability is not mitigated by AG ¶¶ 20(b) and (g).

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. I find against Applicant on SOR ¶ 1.

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.c:

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