



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



In the matter of:)
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-----) ISCR Case No. 14-05407
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)
Applicant for Security Clearance)

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel
For Applicant: *Pro se*

03/08/2016

Decision

HOWE, Philip S., Administrative Judge:

On June 19, 2014, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On February 23, 2015, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on March 2, 2015. He answered the SOR in writing on March 18, 2015, and did not request a hearing before an administrative judge. On September 17, 2015, Applicant requested his case be converted to a hearing case (Tr. 8; Answer Item 4).

Department Counsel was prepared to proceed on October 20, 2015, and I received the case assignment on October 29, 2015. DOHA issued a Notice of Hearing on October 28, 2015, and I convened the hearing as scheduled on November 19, 2015. The Government offered Exhibits 1 through 4, which were received without objection. Applicant testified and submitted Exhibits A through I, without objection. Applicant was given until December 3, 2015, to submit additional exhibits pertaining to the state use tax. He did submit documents to which there was no objection and I admitted them into the record as Exhibits J to M. The record closed on December 3, 2015.

DOHA received the transcript of the hearing (Tr.) on December 2, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Department Counsel moved to amend the SOR by adding ¶ 1.d, alleging Applicant is indebted for state use tax in the approximate amount of \$32,000 as of November 2015, and that this debt has not been satisfied (Tr. 41). Applicant had no objection to this amendment and I granted the motion.

Findings of Fact

In his Answer to the SOR Applicant denied all the factual allegations in the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 68 years old, married, and has four children. He is president and owner of a defense contractor small business organization. It develops new products and manufactures some of them for sale on the commercial market. (Tr. 19, 20, 36, 37, 42; Exhibit 1)

The SOR alleges three delinquent debts owed by Applicant. A fourth debt for state taxes was amended into the SOR during the hearing. Applicant attributes his company's financial difficulty to the economic downturn that started in 2008. His company was not receiving contracts from the government that provided a revenue stream for the company. Also, his manufacturing sales decreased because of the recession, and governmental regulations in Europe and Asia cut into his sales. Applicant stated his company's financial problems started in 2010 and 2011. (Tr. 20-32, 38)

The first debt is a judgment for \$4,886 from December 2013 entered by a lawn care company for cutting grass at Applicant's company (Subparagraph 1.a). This judgment was settled, paid, and a Satisfaction of Judgment filed in the county government recording office on April 28, 2014. Documents pertaining to the settlement

were submitted as exhibits. This debt is resolved. (Exhibits 2-4; Answer with Attachments 1 to 3)

The second delinquent debt alleged in the SOR was for a federal tax lien in the amount of \$140,816 that was filed in 2011 for federal payroll taxes (Subparagraph 1.b). Applicant stated the company “ran out of money” at the time of the governmental sequestration and did not have enough money to pay the payroll taxes. He stated the economic recession from 2008 to 2011 also adversely affected his ability to generate sufficient income to pay his taxes. He attempted to borrow enough money to pay the taxes at the time, but was unsuccessful. As the president of the company, Applicant was made personally liable and the lien was applied to his personal residence. He arranged an installment payment plan with the Internal Revenue Service (IRS) to pay \$3,000 monthly until the debt is satisfied. Applicant testified that \$57,463 remains unpaid on the installment payment plan as of September 2015. The debt has been further reduced by \$6,000 because of two payments of \$3,000 each since the documents that are exhibits were prepared. The exhibits show the quarterly payments made on this debt. Therefore, the debt is about \$51,000 currently. Since 2011 all payroll taxes have been paid on time. (Tr. 22-26; Exhibits 1-4, A to E, M)

The third delinquent debt owed by Applicant is \$295 to a medical provider (Subparagraph 1.c). This debt is one that Applicant’s health insurance provider should have paid. Applicant’s efforts to resolve this debt were successful and he does not owe this money. (Tr. 26, 27; Exhibits 2-4, E; Answer with Attachments 4 and 5)

The fourth debt is a use tax debt owed to his home state and the efforts made to resolve the debt (Subparagraph 1.d). The use tax was owed for the period of 1999 to 2005. The amount originally owed was \$49,679.86. Applicant settled with the state to pay \$32,000 in a 36-month installment payment agreement. He is making those payments. (Tr. 30, 32, 39-41; Exhibits 2-4, H, L, M, N)

Applicant also settled a workers compensation payment case with the state. In October 2015 the balance owed was \$1,972. This debt has been paid in full. (Tr. 28, 29, 39; Exhibits 2-4, F, G, J, K)

Applicant has held a security clearance in the past when his company, or he, were working on government projects. His last security clearance ended five years ago when he did not have any more classified contracts. (Tr. 37)

Policies

When evaluating an applicant’s suitability for a security clearance, 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 useful 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 the adjudicative process (AG ¶ 2(a)). 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 access to classified information will be resolved in favor of 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 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 the applicant may deliberately or inadvertently fail to protect or 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 Executive Order 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 or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant accumulated \$145,997 in delinquent debt from 2011 to the present time that remained unpaid at the time the SOR was issued. Applicant has three delinquent debts listed in the SOR, including a tax debt for his company. He also acknowledged a state worker's compensation debt his company owed that was not listed in the SOR, and a state consumer use tax his company owed. These two disqualifying conditions are established.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Three conditions may be applicable:

(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant is paying his tax debts in an orderly manner. His company's financial difficulty and the attribution of the tax debts to him personally under state and Federal laws were beyond his control. There was no revenue stream to pay all these obligations because the government contracts upon which the company depended were not forthcoming during the recession of 2008 to 2011, and the sequestration on spending ordered by the Federal government. Applicant has now arranged installment payment plans to pay the state consumer use tax and the Federal payroll tax debts, has paid in full two debts listed in the SOR, and paid the workers compensation debt. Therefore, there are clear indications from the evidence he presented that the financial problems are under control and being resolved. AG ¶ 20(b) is established.

There are clear indications from the testimony, and the documents submitted as exhibits, that the financial problem involving the Federal and state taxes is being resolved and is under control. Applicant is making regular payments to the governmental agencies according to installment payment plans. AG ¶ 20 (c) is established.

Applicant worked diligently to repay his company's tax debts and his lawn service fees along with the \$295 medical bill that was eventually paid by his insurance company. AG ¶ 20(d) applies because of Applicant's good-faith efforts to resolve his delinquent debts.

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 an applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Applicant is a businessman who runs a company that depends on government contracts for a large part of its annual revenue. It would have been a better course of action to make arrangements to pay his payroll and other taxes on time, to save penalty and interest if for no other reason. The payroll tax payments affect his employees also, and they should have been paid on time as required. His debts are paid or being paid, and the issues are not likely to recur as he manages the company's business.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

PHILIP S. HOWE
Administrative Judge