



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



In the matter of:)	
)	
)	ISCR Case No. 14-05652
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

01/28/2016

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. He was delinquent on state income tax resulting in a tax lien of more than \$11,000 and failed to timely file federal income tax returns for eight years, resulting in \$44,000 in federal tax being owed. He has made some payment on his state income tax debt. However, the amounts of the payments are insufficient to mitigate the financial considerations security concerns. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on January 16, 2015, the DoD issued a Statement of Reasons (SOR) detailing security concerns. On

¹ Executive Order 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 September 1, 2006.

February 23, 2015, Applicant answered the SOR and elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel (DC) submitted the Government's case in a File of Relevant Material (FORM), dated September 17, 2015. The FORM contained seven attachments (Items). On October 5, 2015, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. Applicant made an undated response, which included nine postal money receipts. There was no objection to Applicant's response to the FORM; it was admitted as Item A. On December 1, 2015, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, he indicated he had reduced his state tax debt from \$11,800 to \$7,159 as of February 2015. (Item 2) He also indicated he was working with the Internal Revenue Service (IRS) to resolve his federal income tax debt. He asserted he had filed his federal income tax returns for tax years 2009 through 2013, except for tax year 2010, which he intended to file as soon as possible. In discussing his tax obligation with the IRS, he asserts he had agreed, starting on April 25, 2015, to make \$599 monthly payments. (Item 2) I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and submissions, I make the following additional findings of fact.

Applicant is a 53-year-old truck driver who has worked for a defense contractor since May 1983 and seeks to retain a security clearance. He asserts he has held a clearance for 33 years. In August 1992, he was divorced and has one daughter who is 25 years old. (Item 3)

On Applicant's January 2014 Electronic Questionnaires for Investigations Processing (e-QIP), he indicate he had not filed his 2006 through 2012 state and federal income tax returns. (Item 3) He stated he had fallen behind on his finances, was about out of debt, and intended to start repaying his taxes in early 2014. (Item 3) He estimated he owed taxes of approximately \$4,000 for each of the years in question. (Item 3)

On March 3, 2014, Applicant provided an unsworn enhanced personal subject interview (PSI) (Item 6) which stated:

The reason behind [Applicant's] financial problems is that he had a bad marriage and was paying for his daughter's dance career. There was a snowball effect and [Applicant's] hasn't had a chance to catch up on his finances. [Applicant] has not been contacted by the IRS, and has not tried to reach them yet. (Item 6)

Applicant's February 2011 credit report lists two tax liens of \$11,802 and \$2,079. (Item 5) In his PSI, he stated he intended to take care of his state tax obligation during 2014. (Item 6) As of May 2014, the state tax debt was \$10,243 and his pay was being garnished \$155 monthly. (Item 4) A February 2015 Franchise Tax Board (FTB) letter

indicates he owed \$7,159 for tax years 2009, 2010, 2011, and 2012. (Item 2) The FTB letter indicated monthly payments were set at \$400 and the next payment was due March 1, 2015. (Item 2) Between March 3, 2015 and October 30, 2015, he made four \$400 payments to the FTB. Prior to the letter, during 2014, he had made four payments. (Item A)

Applicant asserted he had reached a repayment agreement with the IRS whereby he was to make 72 monthly payments of \$599 monthly starting in April 2015. (Item 2) He indicated he owed \$44,000 in federal taxes. (Item 2) He provided a postal money order receipt showing an October 2015 payment to the IRS of \$100.

Applicant was attempting to obtain a less expensive apartment so he could make additional payments on his taxes. (Item 2) There is no information indicating he has received financial counseling. There is no information as to what, if any, taxes he had had withheld from his salary for the tax years in question.

Policies

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 must be considered 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. 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 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.

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 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 Executive Order (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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his or her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage their finances to meet their financial obligations.

Applicant failed to timely file his state income tax returns and timely pay his state taxes for four years resulting in an \$11,000 tax lien. He failed to timely file his federal returns from 2006 through 2013 and timely pay his federal income tax, resulting in a delinquent \$44,000 federal income tax obligation, Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts,” AG ¶ 19(c), “a history of not meeting financial

obligations,” and AG ¶ 19(g), “failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same” apply.

Five financial considerations 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, 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;

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

(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.

None of the mitigating factors for financial considerations fully extenuate the security concerns. Applicant's financial difficulties are both recent and multiple. He has been employed with his current employer for 32 years. There is a showing he owed more than \$11,000 for failing to file four years of state returns and owes \$44,000 for failing to file eight years of federal income tax returns and pay taxes due.

In March 2014, Applicant was made aware of the Government's concerns about his unfiled state and federal tax returns and the tax obligation, which together total more than \$50,000. During his PSI, he indicated he intended to pay his state tax obligation during 2014. The state tax obligation has yet to be paid. As of February 2015, he owed more than \$7,000 and made four payments of \$400 each from March 2015 to October 2015. Although he paid \$1,600, he failed to show documentation that he complied with the agreement which required him to pay \$400 monthly, which would have entailed eight payments during the period in question.

Applicant owes \$44,000 in federal income tax and provided documentation that he had paid \$100. In April 2015, he was to start making \$599 monthly payments. He provided no documentation he did so. He blames his financial problems on a bad

marriage and providing support for his daughter. His marriage ended in August 1992, which was more than ten years before his 2006 tax returns were due.

Applicant provided no evidence he has received credit or financial counseling. He has not demonstrated that his financial problems are under control or that he has a plan to bring them under control. He asserts he has repayment plans with both the state and IRS to pay his delinquent taxes. However, he provided no documentation supporting these assertions nor did he provide documentation he made payment in compliance with any repayment agreements. He showed he made four state tax payments between March 2015 and October 2015, when the agreement required eight payments. He alleged federal repayment required \$599 monthly payments starting in April 2015. However, he documented only a single \$100 payment.

AG ¶ 20(a) does not apply because the delinquent debts remain unpaid, and because they remain unpaid, they are considered recent. There is nothing in the record supporting that conditions under which the debts were incurred were unusual. In March 2014, he was notified of the Government's concern over his delinquent obligations. Given sufficient opportunity to address his financial delinquencies, Applicant has failed to act timely or responsibly under the circumstances. Failing to pay the debts casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) does not apply. Applicant provided no information concerning factors beyond his control. By failing to show any payments he has failed to show he has acted responsibly under the circumstances.

The mitigating condition listed in AG ¶ 20(c) does not apply. There has been no evidence Applicant has received financial counseling. Additionally, there is no clear showing that his delinquent federal taxes are being addressed. The mitigating condition listed in AG ¶ 20(d) minimally applies because he is making some payment, but is not making the monthly payments agreed. The mitigating condition listed in AG ¶ 20(e) does not apply because none of the debts are disputed.

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(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.

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 has been employed and held a clearance for more than 30 years. He provided no information about his duty performance. He has been aware of the Government's concern about his delinquent debts since his March 2014 interview, the January 2015 SOR, and September 2015 FORM. He had made some payments on his state tax debt, but showed he made a single \$100 payment on his \$44,000 delinquent federal tax obligation.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances and facts that would mitigate the financial considerations security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debt. He failed to provide such information, and by relying solely on the scant explanation in response to the SOR, he failed to mitigate the financial considerations security concerns.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not recommended. In the future, if Applicant has continued to pay his state tax obligation and commenced paying his delinquent federal tax obligation, established compliance with a repayment plan, or otherwise substantially addressed his past-due tax obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

Overall, the record evidence leaves me with substantial doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns.

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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a and 1.b: 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 interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge