



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



In the matter of:

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) ISCR Case No. 15-04153
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Applicant for Security Clearance

Appearances

For Government: Caroline Heintzelman, Esquire, Department Counsel

For Applicant: *Pro se*

06/20/2016

Decision

DAM, Shari, Administrative Judge:

Applicant has a history of financial problems, dating back to at least 1997, and more recently includes his failure to file tax returns beginning in 2010. He has delinquent debts that are not paid or resolved. Financial security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

In January 2012 Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) for re-investigation. On November 25, 2015, the Department of Defense (DOD) 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; 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 for SORs issued after September 1, 2006.

On January 5, 2016, Applicant answered the SOR (Answer), and requested a hearing. On March 10, 2016, the Department of Defense Office of Hearings and Appeals (DOHA) assigned Applicant's case to me. On said date, DOHA issued a Notice of Hearing, setting the case for April 7, 2016. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 9, which were admitted into evidence without objections. Applicant testified. He offered no exhibits. DOHA received the hearing transcript (Tr.) on April 14, 2016.

Procedural Rulings

Based on the evidence presented during the hearing, Department Counsel moved to amend the SOR by adding additional tax years to the first two paragraphs. Applicant did not object to amending ¶ 1.a and ¶ 1.b. The Department's motion to add tax years to those paragraphs is granted. (Tr. 37-38.) The SOR now alleges as follows:

¶ 1.a. You failed to file your Federal income tax returns for tax years 2010 through 2014.

¶ 1.b. You failed to file your state income tax returns for tax years 2010 through 2014.

Department Counsel moved to add the following allegation to the SOR:

¶ 1.h. You are indebted to the Lions Club for an account that is unpaid or delinquent in the amount of \$7,000.

Applicant objected to said amendment and his objection is sustained. Said information will not be discussed as a disqualifying condition, but may be discussed in the analysis of mitigating conditions and the whole-person concept. (Tr. 39.)

Findings of Fact

Applicant admitted all allegations in the SOR, except those in ¶ 1.c, which he denied with explanations. His admissions are accepted as factual findings.

Applicant is 49 years old and divorced from his second wife since 2007. He and his former wife have two children. One of his teenage sons lives with him, although there is no formal custody agreement. He earned a master's degree in 2014. He served on active duty in the military beginning in 1986, and retired in 2007 as an E-6. (Tr. 15-19.)

Applicant has worked for his current employer since 2013. His annual salary is \$92,000. Prior to this employment he was unemployed from November 2012 to July 2013.

Based on credit bureau reports (CBR) from February 2016, February 2015, and February 2012, the amended SOR alleged seven financial security concerns. The status of each allegation is as follows.

1 (¶ 1.a) Applicant has not filed his Federal income tax returns for 2010 through 2014. (Tr. 20-22.)

2. (¶ 1.b) Applicant has not filed his state income tax returns for 2010 through 2014. (Tr. 20-22.)

3. (¶ 1.c) Applicant denies owing \$23,812 for unpaid child support. He said his payments are automatically withdrawn from his salary. He pays \$1,000 a month for both children. He has not investigated the information which is listed on his most recent credit report, as he has been overwhelmed by these financial matters. (Tr. 26-27, 35; GE 5.)

4. (¶ 1.d) The \$150 medical debt is unresolved.

5. (¶ 1.e) The \$94 medical debt is unresolved.

6. (¶ 1.f) The \$4,600 judgment owed to a former landlord for rent from 2012 is unresolved. (Tr. 30.)

7. (¶ 1.g) Applicant filed a Chapter 13 bankruptcy in April 1997, which was later converted to a Chapter 7 and discharged in February 2001. He was married to his second wife at the time, and admitted that they were living beyond their means. (Tr. 36.)

Applicant attributed his financial problem to procrastination and avoidance. (Tr. 20.) He recently contacted a tax assistance company to help him with unfiled tax returns. He said the company's fee is \$9,000 and he cannot afford it. (Tr. 23.) Applicant has not obtained credit or financial counseling. (Tr. 31.) He did not provide a workable plan for resolving his unfiled tax returns, or a budget from which his ability to resolve the remaining delinquencies and avoid additional debt problems can be predicted with any certainty.

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 (AG) 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, 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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 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. Under Directive ¶ E3.1.15, "[t]he 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." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

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.¹

AG ¶ 19 describes three conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual federal, state or local income tax returns as required.

Starting in 1997 when he filed a Chapter 13 bankruptcy, Applicant has accumulated delinquent debts that he has been unable or unwilling to resolve. He has also failed to timely file Federal and state income tax returns for tax years 2010 through 2014. The evidence raises the above security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's delinquent debts:

- (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;

¹ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

(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.

Applicant's delinquent debt problems date back to before 1997 when he filed a Chapter 13 bankruptcy. Since then he has accumulated additional delinquent debts. His reliability and trustworthiness in managing his income tax obligations for at least five tax years remains a concern. AG ¶ 20(a) does not provide mitigation.

Applicant was unemployed for a period of time before obtaining his current position in 2013. That was a circumstance beyond his control. However, he provided insufficient evidence that he acted responsibly in managing debts that were accumulating over the years. He offered no evidence that circumstances beyond his control prevented him from filing income tax returns. AG ¶ 20(b) has minimal application. He did not offer evidence that he received credit or budgetary counseling, and there are no indications that his finances are under control or that he has filed his delinquent tax returns. Mitigation under AG ¶ 20(c) was not established. He did not provide evidence that he resolved any of the SOR allegations, which would demonstrate a good-faith effort to resolve debts and legal obligations. The evidence does not establish mitigation under AG ¶ 20(d). He denied the allegation pertaining to child support payments, but did not provide evidence that they are current. AG ¶ 20(e) does not apply to that debt.

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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is a mature, intelligent 49-year-old employee of a defense contractor. He is a retired airman, who honorably served on active duty for 21 years. He has held a security clearance in the past. While those are positive factors, his history of financial problems, including a failure to file tax returns for five years, outweigh those facts. He has not established a track record of financial reliability and responsibility. He does not work with a written budget nor has he sought financial counseling or assistance. He does not defend his irresponsibility, but admits that he has not filed his tax returns because he procrastinates and feels overwhelmed by these issues. Those are not valid reasons for failing to manage his financial obligations. At this time the likelihood that similar problems will continue is significant. Applicant did not meet his burden to mitigate 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:	AGAINST APPLICANT
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Subparagraphs 1.a through 1.g:	Against Applicant
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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 eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge