



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



In the matter of:)	
)	
)	ISCR Case: 17-01805
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert B. Blazewick, Esquire, Department Counsel
For Applicant: *Pro se*

01/04/2019

Decision

WHITE, David M., Administrative Judge:

Applicant owes more than \$32,000 in delinquent Federal and state income tax debt, and recently filed a Chapter 13 bankruptcy to “manage” the surrender of his home in lieu of foreclosure. He offered insufficient evidence of efforts or means to resolve his remaining delinquencies, or to demonstrate rehabilitation. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

Statement of Case

On October 23, 2015, Applicant submitted an electronic questionnaire for investigations processing (e-QIP). (Item 3.) On June 29, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F: Financial Considerations. (Item 1.) 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 *National Security*

Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position, that became effective for all Executive Branch agencies on June 8, 2017.¹

Applicant answered the SOR on July 25, 2017, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On September 5, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing eight Items, was mailed to Applicant on September 7, 2017, and received by him on September 18, 2017. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant's bankruptcy attorney submitted five documents in response to the FORM, on Applicant's behalf, with an explanatory cover letter dated October 7, 2017. This submission is marked Applicant's Exhibit (AE) A, and Department Counsel had no objection to its admissibility. Applicant did not submit any other response to the FORM, did not file any objection to its contents, and did not request additional time to respond beyond the 30-day period. AE A and Items 1 through 8 are admitted in evidence.

Findings of Fact

Applicant is 45 years old and married, with two children. He earned a GED in July 1991, and a certificate from a technical/trade school in February 2002. He has held his present employment with a defense contractor since February 2002, and is seeking to continue the security clearance he has held since 2005 in connection with that position. He has no military service or Federal Government employment. (Item 3.)

Applicant admitted owing delinquent Federal income taxes for each year from 2012 through 2016, totaling \$27,578, as alleged in SOR ¶¶ 1.a through 1.e. (Item 2.) The amounts due were based on Internal Revenue Service (IRS) account transcripts that he obtained on June 5, 2017, and submitted 14 days later in his response to DOHA interrogatories. (Item 4.) These delinquent taxes remain largely unpaid and outstanding according to all record evidence. Applicant entered into several short-lived installment/repayment agreements with the IRS concerning these taxes, which ended after his attempted payments were dishonored. He attributed his initial tax problems to an audit of his 2012 and 2013 tax returns, on which he had claimed and received substantial refunds, but actually owed a combined \$12,658 in unpaid taxes. He blamed subsequent deficiencies on under-withholding and his family's routine spending in excess of available income. The five IRS account transcripts for 2012 through 2016 report total family joint adjusted gross income (AGI) of \$701,395 over that period, for an average annual AGI of \$140,279. (Item 2; Item 4; Item 5.)

¹ These guidelines were promulgated in Appendix A of Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016), for use when rendering any final national security eligibility determination. SEAD 4 ¶ D.7 defines "National Security Eligibility" as, "Eligibility for access to classified information or eligibility to hold a sensitive position, to include access to sensitive compartmented information, restricted data, and controlled or special access program information."

Applicant also admitted owing \$4,540 in delinquent state income taxes for 2012, 2013, and 2015, as alleged in SOR ¶¶ 1.f through 1.h, and that the state had entered a tax lien against him in May 2016 in the amount of \$5,890. He made several payments toward these state taxes under an installment plan, and provided a letter from the state comptroller, dated June 5, 2017, reflecting that \$4,540 remained unpaid as of that date. Applicant did not submit evidence of any additional payments toward his Federal or state income tax debts in his October 2017 response to the FORM. (Item 2; Item 4; Item 5; Item 7; Item 8.)

Applicant admitted the allegation in SOR ¶ 1.j, that his home mortgage, with a total loan balance of \$288,895, was past due in the approximate amount of \$65,697. These figures were based on, and are documented by, Applicant's May 19, 2017 credit report. Applicant and his wife opened this loan for \$295,923 in November 2007, with scheduled monthly payments of \$1,984. This was an FHA-guaranteed refinancing/equity-withdrawal loan to replace the \$220,000 and \$55,000 conventional first and second mortgages with which they had purchased their home in December 2005. The first reported delinquency on the current loan payments was in July 2014, and the reported past-due amount comprises the succeeding 33 months of failure to pay. (Item 2; Item 4; Item 6.)

Applicant's bankruptcy attorney filed a Chapter 13 petition for Applicant and his wife on July 12, 2017. The attorney explained:

The filing was prompted, in part, by the Debtors' inability to negotiate a "short sale" with the lienholders on their former residence located at [address]. The purpose of the case is to manage debts resulting from the surrender of that property and otherwise.

He reported that the five-year Chapter 13 plan had been confirmed on October 2, 2017; and that Applicant and his wife had been excellent clients who "have every intention of completing their plan in the time allotted." Their first two \$936 monthly payments were made to the trustee in August and September 2017. (AE A.)

Applicant did not document any financial counseling. He did not submit the income and expense schedules from his bankruptcy filing, or any other budgetary information, from which to analyze his future ability to comply with the bankruptcy plan while meeting family living expenses and repaying his income tax delinquencies. Applicant offered no evidence concerning the level of responsibility his duties entail in his defense contractor work, or his track record with respect to handling sensitive information and observation of security procedures. I was unable to evaluate his credibility, demeanor, or character in person, since he elected to have his case decided without a hearing.

Policies

When evaluating an applicant's suitability for national security eligibility, 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 national security eligibility.

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. 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 national security eligibility 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 applying for national security eligibility 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 national security eligibility. 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 or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, "[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." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive 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 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 personal 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.

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

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (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.

Applicant incurred more than \$32,000 in delinquent Federal and state income tax debt since 2012, and about \$66,000 in mortgage debt through failure to make required payments since July 2014. His home was foreclosed and will be surrendered to the lienholder under his recent bankruptcy plan. He provided insufficient financial information to clarify whether this financial irresponsibility stemmed from inability or unwillingness to pay these important financial obligations, despite earning over \$700,000 during those five years. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate the resulting security concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's admitted financial difficulties:

(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, 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's history of delinquent debt over the past six years is substantial, and his financial irresponsibility is ongoing. His failure to demonstrate substantial progress toward resolution of any of the SOR-alleged tax and mortgage debts in a meaningful way creates ongoing concerns about his reliability, trustworthiness, and judgment. He offered no reasonable basis to conclude that such problems will not continue or recur. Mitigation was not established under AG ¶ 20(a).

Applicant neither claimed that his debts arose from circumstances beyond his control, nor showed that he acted responsibly under such circumstances, as required for mitigation under AG ¶ 20(b). He offered no evidence of effective financial counseling or budget information establishing solvency going forward, and admitted his inability to repay his current delinquencies. He failed to demonstrate that these problems, in aggregate, are being brought under control; or that a good-faith effort toward resolution has actually been followed through upon for a meaningful period. This specifically includes his failure to comply with several short-lived Federal and state income tax repayment agreements, and insufficient evidence of payments under his most recent agreements if they survived his bankruptcy plan. Accordingly, Applicant did not establish mitigation of financial security concerns under the provisions of AG ¶¶ 20(c), 20(d), or 20(g).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable 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 adult, who is accountable for his choices. He continues to owe more than \$32,000 in delinquent income tax debt, and recently undertook a Chapter 13 bankruptcy plan requiring large monthly payments that he has no meaningful track record of being able to make. The potential for pressure, exploitation, or duress remains undiminished, and rehabilitation was not demonstrated. Overall, the evidence creates significant doubt as to Applicant's judgment, reliability, eligibility, and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the Financial Considerations guideline.

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

Subparagraphs 1.a through 1.j:

Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. National security eligibility for access to classified information or to hold a sensitive position is denied.

DAVID M. WHITE
Administrative Judge