



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



In the matter of:)
)
) ISCR Case No. 18-01133
)
Applicant for Security Clearance)

Appearances

For Government: Eric Price, Esq., Department Counsel
Nichole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

06/06/2019

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 9, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on October 19, 2018, and requested a hearing before an administrative judge. The case was assigned to me on January 11, 2019.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 24, 2019, scheduling the hearing for March 6, 2019. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through Q, which were admitted without objection. The record was held open until May 13, 2019, and extended at Applicant's request to June 4, 2019, for Applicant to submit

additional information. He submitted documents that I have marked AE R through T and admitted without objection.

Findings of Fact

Applicant is a 49-year-old chief executive officer (CEO) and owner of a company doing business as a subcontractor for a defense contractor. He is a high school graduate. He is divorced with one child.¹

Applicant was president and owner of a company from 1996 to 2007; he was CEO and owner of another company from 2007 to 2015; and he has been the CEO of his current company since 2015.²

Applicant developed financial problems, which he attributed to loss of business after the attacks on 9/11, the financial crisis and recession in the later 2000s that affected his business, and his 2010 divorce. He did not pay his federal and state income taxes and other debts.³

Applicant owes the IRS for tax years 2002, 2003, 2004, 2008, and 2010. The taxes owed for 2002 through 2004 are civil penalties from when Applicant failed to pay the taxes that were withheld from his employees' paychecks. He stated that he could not keep his employees working and also pay the taxes, so he decided not to pay the taxes.⁴

Applicant's adjusted gross income for 2010 was \$171,420; his tax liability was \$34,986; and his only payment was \$4,987, which was paid on April 15, 2011. As of September 2016, with penalties and interest, he owed the IRS \$56,536 for 2010. It is unclear how much he owes the IRS in total, but Applicant estimated his federal tax debt at \$400,000. In May 2015, the IRS temporarily closed the collection case, having determined that Applicant did not have the ability to pay the amount owed. The IRS informed him that he still owed the money, and penalties and interest would continue to accrue. In August 2018, the IRS determined that the account was again considered collectible.⁵

In April 2017, the IRS transferred \$2,272 from what would have been a refund for tax year 2016 to Applicant's civil penalty for 2002. Applicant owed the IRS for tax year 2017, but he made three payments totaling \$6,954 between August 2018 and October 4, 2018, to pay all the taxes owed for that year. Applicant is working on an offer in

¹ Tr. at 39-40, 79-80; GE 1, 2.

² Tr. at 40; GE 1, 2; AE P.

³ Tr. at 23-24, 30, 33-34, 39, 70-72; Applicant's response to SOR; GE 1-3; AE I.

⁴ Tr. at 24-30, 33, 42, 91-94; Applicant's response to SOR; GE 1, 4; AE A, B, I.

⁵ Tr. at 24-30, 55; Applicant's response to SOR; GE 1, 4; AE A, B, I.

compromise with the IRS. As of the close of the record on June 4, 2019, there was no agreement in place.⁶

Applicant and his state entered a payment agreement in August 2018, in which Applicant agreed to pay \$851 per month for 60 months for the balance due of \$44,533. He established that he made payments and reduced the balance to \$39,726 as of February 2019.⁷

In addition to the unpaid federal and state taxes, The SOR alleges three delinquent debts totaling \$18,576 and an unpaid \$10,709 judgment. Applicant established that he paid the \$5,718 (SOR ¶ 1.d) and \$5,682 (SOR ¶ 1.e) debts in April and May 2018. The creditor for the \$7,176 debt (SOR ¶ 1.c) issued an IRS form 1099-C (Cancellation of Debt) in 2015, forgiving the debt. Applicant settled the judgment in October 2018 for \$10,709 (SOR ¶ 1.f), payable in ten monthly payments of \$1,079. Applicant established that he made payments pursuant to the agreement.⁸

Applicant called a neighbor as a witness who testified that he is honest and diligent. Applicant stated that he deeply cares about his service to this country, and that he hopes he can continue to serve it. He asserted that regardless of the decision in this case, he “will, of course, take care of [his] financial obligations as [he has] always done.”⁹

Policies

This case is adjudicated under Executive Order (EO) 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), which became effective on June 8, 2017.

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 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, administrative judges apply the guidelines 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

⁶ Tr. at 35-37, 42; Applicant’s response to SOR; GE 4; AE I, J, R.

⁷ Tr. at 37, 64; Applicant’s response to SOR; GE 3; AE C, I, K.

⁸ Tr. at 35, 38, 67, 73-78, 91; Applicant’s response to SOR; GE 2; AE D-I, L-N, Q.

⁹ Tr. at 99-104; AE R.

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 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, the 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.” 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 EO 10865 provides that adverse 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (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 has a history of financial problems, including unpaid taxes, judgments, and delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (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; 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 attributed his financial problems to loss of business after the attacks on 9/11, the financial crisis and recession in the later 2000s that affected his business, and his 2010 divorce. Those conditions were beyond his control. His tax issues were not beyond his control.

Failure to comply with tax laws suggests that an applicant has a problem with abiding by well-established government rules and systems. Voluntary compliance with rules and systems is essential for protecting classified information. See, e.g., ISCR Case No. 16-01726 at 5 (App. Bd. Feb. 28, 2018). A person who fails repeatedly to fulfill his or her legal obligations, such as paying taxes when due, does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. See, e.g., ISCR Case No. 17-01382 at 4 (App. Bd. May 16, 2018).

Applicant's non-tax debts and judgment are mitigated as paid, being paid, or cancelled. However, he still owes the IRS about \$400,000 and his state more than \$30,000. He stated that he intends to pay his taxes. Intentions to pay debts in the future are not a substitute for a track record of debt repayment or other responsible approaches. See ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013). He is credited with the payment agreement he entered into with his state. AG ¶ 20(g) is applicable to his state taxes, but it does not completely mitigate the judgment issues raised by Applicant's many years of shirking his responsibility to pay his taxes.

There is insufficient evidence for a determination that Applicant's tax problems will be resolved within a reasonable period. I am unable to find that he acted responsibly under the circumstances or made a good-faith effort to pay his taxes. His tax issues are recent and ongoing. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. I find that the security concerns arising out of Applicant's unpaid federal and state taxes are not mitigated.

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(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.

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. I have incorporated my comments

under Guideline F in my whole-person analysis. I also considered Applicant's favorable character evidence and his long work record. However, he owes more than \$400,000 in federal and state income taxes.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate 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, Guideline F:	Against Applicant
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraphs 1.c-1.f:	For Applicant

Conclusion

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.

Edward W. Loughran
Administrative Judge