



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



In the matter of:)	
)	
)	ISCR Case No. 18-01482
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Adrienne Driskill, Department Counsel
For Applicant: Pro se

June 21, 2019

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On September 28, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 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 for cases after June 8, 2017.

Applicant answered the SOR on January 11, 2019, and requested a hearing before an administrative judge. The case was assigned to me on February 27, 2019. The Defense Office of Hearings and Appeals issued a notice of hearing on March 19, 2019, and the hearing was convened as scheduled on May 6, 2019. The Government offered four exhibits, referred to as Government Exhibits 1 through 4, which were

admitted without objection. The Applicant offered four exhibits at the hearing, referred to as Applicant's Exhibits A through D. Applicant testified on his own behalf. The record remained open until close of business on May 20, 2019 to allow the Applicant to submit additional supporting documentation. Applicant submitted two Post-Hearing documents, which were admitted without objection as Applicant's Post-Hearing Exhibits A and B. DOHA received the transcript of the hearing (Tr.) on May 23, 2019.

Findings of Fact

Applicant is 55 years old. He is unmarried with no children. He has a high school diploma. He is employed by a defense contractor as a Harness Assembly Technician. He is seeking to obtain a security clearance in connection with his employment.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information.

The SOR alleges that Applicant failed to file his Federal and State income tax returns as required for tax years 2002, 2004, 2005, 2007, 2009, 2010, 2012, 2013 and 2014. He also failed to timely file his Federal and state income tax returns for tax years 2015 and 2016. Applicant failed to pay his 2003 Federal income taxes and they were been written off by the IRS in 2015. He owes approximately \$23,579 in Federal back taxes and approximately \$17,262 for four other delinquent debts. In his answer, Applicant admitted allegations 1.a., through 1.k., and 1.o. He was not aware of the debts set forth in allegations 1.l., 1.m., and 1.n.

Applicant began working for his current employer in 2006 and worked there until 2009. He was rehired in 2015 and he has worked there since then. On August 23, 2018, Applicant was offered a promotion if he is able to obtain a security clearance. Credit Reports of the Applicant dated August 10, 2017; and February 20, 2019, confirm each of the delinquent debts listed in the SOR. (Government Exhibits 3 and 4.)

Applicant experienced several long periods of unemployment that has affected his ability to pay his debts. He was unemployed from September 2008 to August 2009; December 2009 to October 2012; June 2013 to September 2014; and June 2015 to March 2016. He states that due to a bad economy, he was unable to find a suitable job. During these periods, he collected unemployment benefits. However, being off work for so long, he became depressed, overwhelmed and despondent. The little money he did have he used to pay his rent and to survive. (Applicant's Post-Hearing Exhibit B.) He states that he did not file his Federal and state income tax returns for tax years 2002, 2004, 2005, 2006, 2007, 2009, 2010, 2012, 2013, and 2014 because he did not have the money to file or pay his taxes.

Applicant also did not timely file his Federal or State income tax returns for tax years 2015 and 2016. As a result of not filing his 2003 Federal income tax returns, his balance was written off by the IRS in 2015. Applicant's status report from the state tax authority dated December 5, 2018, indicates that as of that date, Applicant had filed his 2011, 2015, 2016 and 2017 state income tax returns. (Applicant's Exhibit C.)

Applicant currently owes Federal income taxes for tax years 2006, in the amount of \$3,191; 2007, in the amount of \$3,714; 2008, in the amount of \$1,297.51; 2015, in the amount of \$9,074.05; 2016, in the amount of \$2,662.21; and 2017, in the amount of \$3,639.84. These taxes have not been paid and remain outstanding. Applicant states that he plans to start a payment plan with the IRS to resolve this debt in June 2019. (Applicant's Post-Hearing Exhibit B.)

Applicant initially testified that all Federal and state income tax returns have been filed and everything has been cleared up. (Tr. p. 52.) Applicant had no proof of filing with him, nor proof that he has paid his back Federal and/or state taxes. Applicant stated that he started filing his taxes about three years ago, when he started working for his current employer. The record was left open after the hearing to allow the Applicant to provide this documentation. Applicant did not provide it. Applicant also testified that if he receives his security clearance, the financial matters will be fixed immediately. He will be promoted and assigned overseas, and the new job will allow him to be able to pay his delinquent taxes and other debts. (Tr. pp. 60-62.) Applicant stated that he is not currently on a payment plan with the IRS, but he plans to set up a payment plan and begin payments by next month. (Tr. p. 62.)

Applicant contends that in early 2018, his personal information was stolen and things have appeared on his credit report that he is not aware of, and that should not be there. Applicant is disputing some of the delinquent debts listed on his creditor reports, and has placed a credit freeze and credit monitoring through the credit bureaus on his reports. (Applicant's Post-Hearing Exhibit B.) He initially thought that the following debts were not his:

1.i. A delinquent debt owed to a creditor was placed for collection in the approximate amount of \$524. Government Exhibit 4 indicates that the account was opened in 2016. Therefore, this debt had nothing to do with identity theft that took place in 2018. Also, Government Exhibit 2 shows that Applicant discussed the debt at length with the interviewer. Applicant now believes that it could be his debt. Applicant recently located a copy of the "return receipt" showing that he returned the equipment to the creditor and that there is no balance owed. (Applicant's Post-Hearing Exhibit B.) Applicant states that he is making sure that the debt is being removed from his credit reports.

1.m. A delinquent debt owed to a creditor was placed for collection in the approximate amount of \$1,119. Government Exhibit 3 indicates that the account was opened in June 2013. Therefore, this debt had nothing to do with identity theft that took place in 2018. Applicant now believes the debt could be his debt. (Tr. p. 68.) In fact,

during his interview with the investigator, Applicant disputed the debt because he thought he had paid it, but he does not know for sure. (Government Exhibit 2 and Tr. p. 69.) Since the debt does not appear on the Applicant's most recent credit report, it will be assumed that the debt was paid. (Tr. p. 70.)

1.n. A delinquent debt owed to a creditor was placed for collection in the amount of \$619. Government Exhibit 4 shows that the account was opened December 2016. Therefore, this debt had nothing to do with identity theft that took place in 2018. Applicant also discussed the debt with the investigator and stated that he disputed the debt. (Government Exhibit 2 and Tr. p. 71.) Since the debt does not appear on Applicant's most recent credit report, and Applicant states that he did not pay it, it is assumed to be successfully disputed. (Tr. p. 72.)

1.o. A delinquent debt to a creditor in the approximate amount of \$15,000 is being paid by the Applicant through garnishment. Applicant pays \$250 every pay period toward the debt. Applicant states that he has now paid back \$7,406 of the \$7500 owed and when he pays it off in full, (when the garnishment is completed on June 1, 2019), he will begin a payment plan with the IRS. (Applicant's Post-Hearing Exhibit B.)

Applicant's Post-Hearing Exhibit A is a notice of account dispute, indicating that a creditor has been removed from Applicant's credit report. The creditor is not one that is listed in the SOR. Applicant has never received any financial counseling to improve his finances. He is not adverse to the idea and believes it could be helpful.

Applicant admits to his financial mistakes of the past. He indicates that he has solicited advice from his financial officer concerning his tax problems and was told to change his deductions on his W2 in order to avoid owing taxes at the end of the year. Applicant also increased his state tax each month by \$50. Applicant states that he is now taking ownership and responsibility for his finances and his life. (Applicant's Post-Hearing Exhibit B.)

Guideline E – Personal Conduct

The Government alleges that the Applicant engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that raise questions about his reliability, trustworthiness and ability to protect classified information.

In his answer to the SOR, Applicant admitted each of the allegations set forth under this guideline. Applicant completed an e-QIP dated August 8, 2017. Section 26, Financial Record - Taxes asked, "In the last 7 years have you failed to file or pay Federal, state, or other taxes when required by law or ordinance?" Applicant provided information on tax years 2013, 2015 and 2016. He failed to provide any information about tax years 2010, 2012, and 2014. (Government Exhibit 1.)

In his interrogatory response dated August 22, 2018, Applicant was asked "have you ever failed to file your Federal income tax returns on time? . . . if yes, list which

years you failed to file your returns on time.” Applicant failed to provide information that he failed to file his Federal income tax returns on time for tax years 2002, 2004, 2005, 2009, 2010, 2012, 2013, 2014 and 2015. (Government Exhibit 2.)

In that same interrogatory response, Applicant was asked “Have you ever failed to file your Federal income tax returns on time? . . . if yes, list which years are not currently filed.” Applicant stated that, “all years have been filed.” He did not list the fact that his Federal income tax returns for tax years 2002, 2004, 2005, 2006, 2007, 2009, 2010, 2012, 2013 and 2014 had not been filed. (Government Exhibit 2.)

In that same interrogatory response, Applicant was asked, “Have you ever failed to file your state income tax returns on time? . . . if yes, list which years you failed to file your state returns on time”. Applicant did not provide information that he failed to file state income tax returns for tax years 2002, 2004, 2005, 2009, 2010, 2012, 2013, 2014, and 2016. (Government Exhibit 2.)

In that same interrogatory response, Applicant was asked, “Have you ever failed to file your state income tax returns on time? . . . if yes, list which years are not currently filed”. Applicant failed to provide information that he had not filed his State income tax returns for tax years 2002, 2004, 2005, 2006, 2007, 2009, 2010, 2012, 2013, and 2014. (Government Exhibit 2.)

Applicant explained that he is really bad with times and dates. His memory is terrible. And for the most part, he does not know why he answered the questions on his e-QIP and in response to the interrogatories the way he did. He does not remember his mindset and at the time, he could have been thinking something completely different. He may have misunderstood the question or made a mistake. (Tr. p. 89 – 96.)

Performance appraisals of the Applicant for the years 2016, 2017, and 2018, reflect that he has consistently completed all of his goals, has a strong and positive work relationship with his team, and has mentored new employees. (Applicant’s Exhibit B.)

Letters of recommendation from various coworkers of the Applicant attest to his hard working nature and tireless efforts to maintain the highest quality of products. He is considered to be an exceptional employee, who is caring, empathetic, and supportive to others. If he does make a mistake, he is forthcoming and honest about them and fixes the problem. He is recommended for a security clearance. (Applicant’s Exhibit B.)

An email correspondence from a government customer indicates that Applicant has been a valuable asset to the program’s efforts. (Applicant’s Exhibit D.)

Applicant received both a silver award on December 10, 2018, and a copper award on October 27, 2017, from his employer for going above and beyond, and for exemplary performance and team commitment in volunteering for overtime that kept the programs on track. (Applicant’s Exhibit B.)

Applicant has completed the requirements and received a Certificate, qualified as a Certified IPC Specialist in Soldered Electrical and Electronic Assemblies, and qualified as a Certified IPC Specialist in Acceptance for Cable and Wire Harness Assemblies. (Applicant's Exhibit B.)

Policies

When evaluating an applicant's suitability for national security eligibility, 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 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 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 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. 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, 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 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 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 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debt 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 failed to file his Federal and state income taxes for many years. He continues to owe delinquent back taxes and he has other delinquent debts. He remains excessively indebted. Only one debt is being paid, and that is through garnishment from his payroll. At this time there is insufficient information in the record to conclude that he is now financially stable, that he can afford his lifestyle, or that he has the financial resources available to handle his financial obligations. No regular monthly payments are being made toward his debts, nor has he shown that he has done

anything about filing or paying his taxes. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under Financial Considerations are potentially applicable under AG ¶ 20.

(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;

(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; and

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

(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.

There were obviously circumstances beyond the Applicant's control that contributed to his financial difficulties. Applicant was unemployed for extended periods and could not find work. Although he was receiving unemployment benefits and at times working odd jobs, he was not earning enough money to pay his bills. His taxes and other debts fell delinquent and have not been paid. At this point, it cannot be said that he is financially stable or that he has made a good faith effort to resolve his indebtedness.

Guideline E- Personal Conduct

The security concern for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant deliberately falsified his e-QIP and his interrogatories in response to questions regarding his failure to file Federal and state income tax returns by failing to disclose them. Applicant clearly knew this information, or should have found the information in order to accurately list them in response to the questions. His lack of full disclosure shows poor judgment. He did not exercise due diligence nor was he forthcoming in responding to the questions. Instead, whether it was laziness or carelessness, he deliberately failed to list his failure to file taxes and pay taxes in response to questions on the e-QIP and in response to his interrogatories. The Government relies on one's responses to the questions on the e-QIP to determine one's trustworthiness. If the answers are not truthful, the Government is misled, and Applicant cannot be trusted. Under the circumstances, Applicant knew or should have known that he failed to file and deliberately did not list this information on his e-QIP and in his interrogatory responses. There are no applicable conditions that could be mitigating under AG ¶ 17.

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 relevant facts and circumstances surrounding this case. I conclude Applicant has not mitigated the Financial Considerations and Personal Conduct 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
Subparagraph 1.a.: through 1.l.	Against Applicant
Subparagraph 1.m.: and 1.n.	For Applicant
Subparagraph 1.o.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a.: through 1.e.	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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge