



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



In the matter of:)	
)	
[NAME REDACTED] ¹)	ISCR Case No. 18-01533
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: Laurence P. Nokes, Esq.

02/06/2019

Decision

MALONE, Matthew E., Administrative Judge:

Applicant’s response to the Government’s information mitigated the security concerns about his finances. Applicant’s request for eligibility for access to classified information is granted.

Statement of the Case

On November 7, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew his eligibility for access to classified information as part of his employment with a federal contractor. After reviewing the completed background investigation, adjudicators at the Department of Defense Consolidated Adjudications Facility (DOD CAF) could not determine that it was clearly

¹ Applicant’s name is misspelled on the Statement of Reasons.

consistent with the interests of national security for Applicant to have access to classified information.²

On June 8, 2018, the DOD CAF issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations). Applicant timely responded to the SOR and requested a decision without a hearing.

On September 5, 2018, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on September 20, 2018. The record closed on November 9, 2018, after Applicant timely responded to the FORM (Response). I received this case for decision on January 30, 2019.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes the federal government \$58,490, a debt that is being enforced through a tax lien filed against him in 2007 (SOR 1.a). In response to the SOR, Applicant denied that he was subject to a federal tax lien.⁴ (FORM, Item 1)

Applicant is 43 years old. After graduating from college in June 2002, he was hired in October 2002 as an engineer by a federal contractor. He still works for that company, and he first received a security clearance in August 2006. (FORM, Item 2)

In July 2000, Applicant bought a house. In May 2012, he gifted an interest in that house to his parents. All three persons have since owned that property in joint tenancy. (FORM, Item 1; Response)

In September 2003, the IRS filed a lien against Applicant's parents to enforce a \$58,462.25 debt for unpaid taxes between 1997 and 1999. The lien was released in October 2012. (FORM, Items 1, 4, and 5)

A credit report obtained by investigators in February 2017 shows a tax lien filed in May 2007 that is attributed only to Applicant. A tax record obtained in August 2018 shows a tax lien filed in May 2007 that is attributed to both Applicant and his parents. Both records show a lien for an amount that is \$27.75 more than the 2003 lien against Applicant's parents. The lien also carries a different filing number from the satisfied tax lien against Applicant's parents. (FORM, Items 4 and 5)

² Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive).

³ See Directive, Section E3.1.7. In the FORM, Department Counsel relies on five enclosed exhibits (Items 1 – 5).

⁴ His denial renders SOR 1.a as a controverted issue of fact and requires the Government to produce sufficient reliable information to support the allegation. See Directive, Section E3.1.14.

On October 10, 2018, the attorney for Applicant's parents⁵ wrote to the IRS to contest both the lien and its entry on Applicant's credit history. In that letter, he averred that in 2003, when the lien was obtained against Applicant's parents, they did not have any assets to which the lien could attach. He further opined that Applicant's name was included in the lien in June 2012 after he and his parents became joint owners of the house he gifted to them. Because Applicant's name was also on the title as a joint tenant at that time, Applicant also became a subject of the lien. (Response)

At some point before receiving an interest in Applicant's house, his parents had arranged with the IRS to repay their tax debt. As part of that agreement, the IRS advised them the lien would be renewed periodically to protect the IRS' interest until the lien was satisfied. Applicant's counsel argues that the May 2007 filing date represented only a renewal of the 2003 lien by the IRS against Applicant's parents, and that it was not the date Applicant's name was added to the lien. Further, a renewal four years after the lien was first filed might explain the different filing number and slightly different amount of debt that was the subject of the lien. Accordingly, Applicant's position is that in June 2012, when he gifted an interest in his house to his parents while the lien was still active, the IRS attached the lien to the house and its owners, and that there is only one lien at issue here. As of November 9, 2018, the IRS had not responded to Applicant's attorney's October 10, 2018 letter. (FORM, Items 3 – 5; Response)

Applicant's explanation of this matter is plausible. The record does not contain any information that clearly establishes the presence of another tax lien against Applicant that is still unresolved. The differences between the details of the release of lien order provided by Applicant and the information about the lien presented in the FORM are minor. Without additional information showing how Applicant incurred his own tax debt, those differences are inconsequential. Based on all of the foregoing, I find as fact that the only tax lien at issue in this case was the lien originally filed against Applicant's parents in 2003 and resolved in 2012. Further, the tax lien filed in May 2007 was the same lien and was attributed to Applicant only through operation of the joint home ownership with his parents, and not because of any failure by Applicant to file or pay his taxes.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁶ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (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

⁵ Their attorney is also representing Applicant in this matter.

⁶ See Directive, 6.3.

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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁷ for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOD based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.⁸ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁹

Because no one is entitled to a security clearance, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for them to have access to protected information. A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.¹⁰

Analysis

Financial Considerations

The DOD CAF's information provided a good-faith basis for the allegation that Applicant owed \$58,490 for a federal tax lien filed in 2007. Such information reasonably raises the security concern expressed at 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

⁷ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁸ See Directive, E3.1.14.

⁹ See Directive, E3.1.15.

¹⁰ See *Egan*, 484 U.S. at 528, 531.

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.

Information presented in support of the SOR requires consideration of the disqualifying conditions at AG ¶¶ 19(a) (*inability to satisfy debts*); 19(c) (*a history of not meeting financial obligations*); and 19(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*). If uncontroverted, the Government's information would show that Applicant failed to pay federal income, property, or business taxes sometime before 2007, and that as of June 2018, he had not paid or otherwise resolved a tax debt being enforced through a federal tax lien.

Applicant denied the single allegation in this case, thus keeping the burden on the Government to produce sufficient information to prove the facts alleged. Applicant also proffered a copy of his parents' release of the 2003 tax lien. The Government's exhibits reflected both a lien attributed only to Applicant and a lien attributed to Applicant and his parents. All of the available information probative of Applicant's responsibility for unpaid taxes shows that the lien at issue in SOR 1.a, while it included Applicant's name, was not the result of any failure by Applicant to file or pay taxes.

Department Counsel argued in the FORM that the information Applicant provided with his SOR response did not meet his burden of refuting or mitigating the security concerns raised by the Government's information. Nonetheless, in response to the FORM, Applicant presented sufficient information to establish that the lien in question was his parents' responsibility; that the lien has been satisfied; and that it has been erroneously attributed to Applicant in his credit history. In short, the record evidence as a whole refutes SOR 1.a as the basis for application of AG ¶¶ 19(a), 19(c), or 19(f).

In the alternative, even if I concluded that Applicant was responsible for the tax lien, it has been resolved for more than six years. Accordingly, the record also supports application of the following AG ¶ 20 mitigating conditions:

(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;

(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.

The record does not contain any other adverse information about Applicant's finances. On balance, Applicant presented sufficient information to refute the single allegation against him, as well as to mitigate the security concerns raised by the Government's information.

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in context of the whole-person factors listed in AG ¶ 2(d). The record evidence as a whole shows that the doubts raised by the DOD CAF's information have been resolved, and it supports a fair and commonsense conclusion in favor of Applicant.

Formal Findings

Formal findings 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: FOR APPLICANT

Subparagraphs 1.a: For Applicant

Conclusion

In light of all available information, it is clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for continued security clearance eligibility is granted.

MATTHEW E. MALONE
Administrative Judge