



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



In the matter of:)
)
) ISCR Case No. 18-01703
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel

For Applicant: *Pro se*
07/26/2019

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant failed to mitigate security concerns raised by his outstanding \$168,000 federal income tax debt. Clearance is denied.

Statement of the Case

On October 22, 2018, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline. This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017.

DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant’s security clearance and recommended that the case be submitted to a Defense Office of Hearings and Appeals (DOHA) administrative judge for a determination whether to deny his security clearance. Applicant timely answered the

SOR and requested a hearing. (Hearing Exhibit (HE) 1). At the hearing, convened on April 10, 2019, I admitted Government's Exhibits (GE) 1 and 2, and Applicant's Exhibits (AE) A and B, without objection. DOHA received the transcript (Tr.) on April 30, 2019.

Findings of Fact

Applicant, 72, has worked for his current employer a federal contractor since January 2017. He served in the U.S Navy from 1965 to 1969 as a Navy Seal and is a combat veteran. Applicant does not require a security clearance for his current position, but eligibility would increase his job prospects and earning potential. Applicant completed a security clearance application, his first, in December 2017. The ensuing investigation revealed that Applicant owes \$168,000 in federal taxes for the 2011 through 2015 tax years, which is alleged in the SOR. Though unalleged, the record also revealed that in 2014, Applicant resolved a \$96,509 federal tax lien for unpaid federal income taxes from 2008 to 2010. (GE 1; Tr. 34.)

Applicant incurred federal tax debt because he did not withhold federal or state income taxes from his pay from 2004 to 2015. Applicant lived and worked overseas between 2004 and 2014 (with the exception of one year between 2009 and 2010), earning approximately \$200,000 annually. Although he timely filed his income tax returns, Applicant admitted that he could not afford his tax liabilities because he lived beyond his means and prioritized other expenses to support his lifestyle. Between January and July 2015, Applicant paid \$4,000 each month toward his federal tax debt. He was laid off in August 2015 and could no longer afford to make any payments. When he returned to work in January 2017, he did not immediately resume payments on his federal tax debt because he was focused on other financial obligations, including a wage garnishment for a \$20,000 child support arrearage, a \$20,000 state income tax debt for the years 2011 to 2015, and a student loan payment. Applicant established an installment agreement with the IRS in June 2018, under which he agreed to pay \$500 each month. According to the record, Applicant made one payment in September 2018. He did not provide evidence of ongoing compliance with the installment agreement. (Answer; GE 2; Tr. 17-19, 22, 22-25, 27-31, 38-39, 43, 60-67.)

At the hearing, Applicant testified that he intends to resolve his tax debt by doubling his monthly payments to \$1,000 per month. However, he cannot afford to do so. Applicant earns approximately \$94,000 annually and receives \$24,000 each year in social security income. He supports a family of five, including his wife and his three minor children from another relationship. After paying his family's living expenses and his other recurring financial obligations, Applicant has no disposable income. At hearing, Applicant stated that he intends to satisfy his federal tax debt by selling property he owns in Country 1, valued at \$600,000 (USD). However, the co-owner of the property refuses to consent to the sale. Applicant has retained an attorney based in Country 1 to help resolve this issue and sell the home. (Tr. 26, 36-38, 40-42, 50-58, 70-72, 75-78.)

Applicant timely filed his 2017 and 2018 income tax returns. He owes approximately \$4,200 in federal taxes for 2018 and expects a \$1,700 refund of his state

taxes. He plans to pay the 2018 balance by withdrawing money from his retirement savings and cash savings. (Tr. 73-75.)

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 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 to AG ¶ 2(a), 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.

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

Failure to meet one's 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. (AG ¶ 18). The record establishes the Government's *prima facie* case that Applicant failed to timely pay his federal income taxes as required for the 2011 through 2015 tax years. (AG ¶19(f)). The record also establishes that Applicant does not currently have the ability to pay his outstanding tax debt. (AG ¶ 19(a)).

Applicant has not presented sufficient information to mitigate the security concerns raised by his tax debt. Applicant's history of tax problems is not limited to the period alleged in the SOR. The record establishes that Applicant began having tax problems as early as 2008. Furthermore, he also owes a state tax liability for the period alleged in the SOR. Applicant's tax problems were not caused by events beyond his control, but by living beyond his means and prioritizing the expenses demanded by his lifestyle choices over his obligation to the government. Although Applicant entered into an installment agreement with the IRS in June 2018, he has failed to establish a consistent history of compliance with that agreement. None of the financial considerations mitigating conditions apply.

Based on the record, doubts remain about Applicant's suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). Applicant has failed to mitigate the concerns raised by his history of tax problems. Applicant's tax problems are not under control and he has not established that he can properly manage his income tax obligations going forward.

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, Financial Considerations: | AGAINST APPLICANT |
| Subparagraphs 1.a: | Against Applicant |

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant a security clearance. Applicant's continued eligibility for access to classified information is denied.

Nichole L. Noel
Administrative Judge