



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXXXXXXX.) ADP Case No. 18-02727
)
Applicant for Public Trust Position)

Appearances

For Government: Carroll J. Connelley, Esquire, Department Counsel
For Applicant: *Pro se*

05/21/2019

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ I deny Applicant’s eligibility for a public trust position.

On 14 December 2018, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising trustworthiness concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, requesting a decision without hearing by the Defense Office of Hearings and Appeals (DOHA). The record in this case closed 20 April 2019, when Applicant’s Response to the FORM was due. Applicant provided no additional evidence. DOHA assigned the case to me 7 May 2019.

¹Consisting of the File of Relevant Material (FORM), Items 1-5.

²DoD conducts trustworthiness determinations for contractor personnel employed in Information Systems Positions pursuant to DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and Security Executive Agent Directive 4, effective on 8 June 2017.

Findings of Fact

Applicant admitted the SOR financial allegations, except for SOR 1.g-1.h. He is a 49-year-old critical facilities engineer sponsored for a public trust position by a defense contractor, for whom he has worked since July 2016. He has not previously had a trustworthiness determination. He was briefly unemployed May-July 2016, but had been continuously employed as a maintenance engineer from May 2004 to May 2016. Applicant married in May 1991, separated in August 2016, and divorced in September 2017 (Item 2, 3). He and his ex-wife have two adult children.

The SOR alleges, and Government exhibits (Items 2-5) establish, 14 delinquent debts totaling over \$28,000 (SOR 1.b-1.o); the SOR also alleges that Applicant failed to timely file his 2014-2016 state income tax returns (SOR 1.a). Applicant admits over \$24,000 in delinquent debt, as well as admitting failing to timely file his 2014-2016 state income tax returns. He claims to have settled SOR debt 1.g in October 2018 (Answer; Item 3). However, Applicant's evidence shows that he settled a delinquent debt that was not alleged in the SOR.³ Applicant also claimed to have paid the automobile loan at SOR 1.h. While the automobile title Applicant submitted with his Answer does not corroborate that claim, Applicant's October 2018 credit report shows the account paid as of July 2017.⁴

The remaining debts comprise three state tax liens, totaling over \$12,000, filed in January and July 2013; three unpaid medical bills totaling over \$800; a nearly \$7,000 automobile repossession; a 2013 judgment for \$2,500, and five collection accounts totaling over \$2,600. The automobile repossession is a joint account with his ex-wife. The medical debts and collection accounts are reported as Applicant's individual liability. All but a couple of the delinquent debts predate Applicant's separation from his wife.

Applicant disclosed his failure to timely file his 2014-2015 state income tax returns, as well as his failure to file his 2014-2015 Federal income tax returns (not alleged), on his March 2017 clearance application (Item 2). He discussed his tax issues, including his failure to timely file his 2016 state and Federal tax returns, during a January 2018 interview with a Government investigator (Item 3). He was also confronted with his SOR debts, based on his April 2017 credit report (Item 4). He claimed to not be aware of some of the debts, but stated that he would investigate all the debts discussed and take action to address them.

³Applicant's April 2017 credit report (Item 4) shows a delinquent mattress retailer store credit card, with its sponsoring bank, and a full 16-digit account number. This account was reported in collection, but also closed, with a zero balance, and was not alleged in the SOR. The 2 October 2018 settlement letter provided by Applicant is from a collection agent for a different sponsoring bank, but with an account number that exactly matches the original creditor.

⁴Applicant's April 2017 credit report (Item 4) showed the account 60-days past due for \$237 on a \$2,948 balance. His October 2018 credit report (Item 5) shows the same creditor, with an account number matching the first 12 digits of the original debt, as current, with no stated balance as of July 2017.

Applicant attributes his financial problems, particularly his failures to timely file his state income tax returns, to his contentious separation and divorce. His Answer documented that he had finally filed his 2015 and 2016 state income tax returns—after he received the SOR—but he had still not filed his 2014 return. He ostensibly has a refund coming for one tax year, and owes twice the amount of the putative refund for the other tax year, but his tax situation for 2014 remains unclear. Even assuming the state seizes the refund and applies it to the balance owed, Applicant did not document any payment toward the balance. Moreover, except as noted above, he provided no evidence of any efforts to resolve delinquent debts since his divorce.

Applicant provided no budget or personal financial statement indicating his financial situation. He has not documented any credit or financial counseling. He provided no work or character references, or evidence of civic or community involvement.

Policies

The adjudicative guidelines (AG) list factors to evaluate a person’s suitability for access to sensitive information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(d). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of eligibility for a public trust position. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Trustworthiness decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s public trust position. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government’s case. Because no one has a right to a public trust position, the applicant bears a heavy burden of persuasion.

Persons with access to sensitive information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgement, reliability, and trustworthiness of those who must protect national interests as their own. The “clearly consistent with the national interest” standard compels deciding any reasonable doubt about an Applicant’s suitability for access in favor of the Government.⁵

⁵See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Analysis

The Government established a case for disqualification under Guideline F, and Applicant failed to mitigate the security concerns. Applicant's delinquent debts predate his separation and divorce. With the exception of the automobile account that he paid, Applicant has documented no efforts to address his delinquent SOR debts. Moreover, the alleged contentiousness of his separation and divorce does not explain his failure to communicate with his state tax authority to find an alternative means of addressing his unfiled state income tax returns. He did not file his 2015 and 2016 returns until after he received the SOR, and he still has not filed his 2014 return.⁶

The Appeal Board has long held that failure to timely file required tax returns may demonstrate a lack of judgment inconsistent with access to classified information.

A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of persons granted access to classified information. Indeed, the Board has previously noted that a person who has a history of not fulfilling their legal obligation to file income tax returns may be said not to have demonstrated the high degree of judgment and reliability required for access to classified information."⁷

This is true whether the failure to file is willful⁸ or attributed to the press of other circumstances.⁹ As recently as December 2015, the Appeal Board upheld a denial of clearance, in a case notably similar to this, of an applicant who had failed to file Federal or state income tax returns for 10 years.

The filing of tax returns is both a financial and a legal obligation. Applicant's . . . failure to have done so for many years is sufficient to raise a concern that he may be unwilling to follow other rules and regulations, such as those that govern the handling of classified information. See, e.g., ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015) (A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good

⁶¶19(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; (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;

⁷ISCR Case No. 12-05053 at 4 (App. Bd. Oct. 30, 2014), reversing Administrative Judge's favorable decision. See also, e.g., ISCR Case No. 98-0608 at 2 (App. Bd. Jun. 27, 2000)(failure to file for five years).

⁸See, ISCR Case No. 98-0801 (App. Bd. Jun. 8, 2000)(tax protester).

⁹See, ISCR Case No. 98-0761 (App. Bd. Dec. 27, 1999)(routine failure to file).

judgment and reliability required of those granted access to classified information). See also *Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961). Indeed, as the Judge noted, Directive, Enclosure 2 ¶ 19(g) explicitly provides that failure to file tax returns is a circumstance that can raise a security concern. Moreover, the Directive presumes a nexus between admitted or proven conduct under any of the Guidelines and an applicant's eligibility for a clearance. See, e.g., ISCR Case No. 14-04648 at 3 (App. Bd. Sep. 9, 2015). ISCR Case No. 14-02930 at 3 (App. Bd. Dec. 9, 2015).

Security concerns under Guideline F are not limited to cases in which an Applicant is financially insolvent or is experiencing difficulty in paying debts. In this case his failure to timely file his Federal returns for at least eight years has created significant tax debt that he has not addressed.

Applicant meets none of the mitigating conditions for financial considerations. given that he has provided no details about his delinquent debts or his divorce.¹⁰ Given that most of his debts arose before his separation, he has not demonstrated that they arose due to circumstances beyond his control, and he has not documented that he took responsible action to address his financial problems.¹¹ His state tax returns remain a work in progress, with no clear resolution established.¹² Applicant has had no credit or financial counseling; he has documented no efforts to resolve his debts.¹³ Moreover, he has obviously not engaged in a good-faith effort to address his debts.¹⁴ Finally, he provided no work or character evidence which might support a whole-person assessment to overcome the trustworthiness concerns raised by his conduct. Accordingly, I conclude Guideline F against Applicant.

¹⁰¶20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

¹¹¶20(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

¹²¶20(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.

¹³¶20(c) the person has received or is receiving counseling for the problem . . . and there are clear indications that the problem is being resolved or is under control;

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

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-g:	Against Applicant
Subparagraph h:	For Applicant
Subparagraphs l-o:	Against Applicant

Conclusion

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue eligibility for a public trust position for Applicant. Eligibility for a public trust position denied.

JOHN GRATTAN METZ, JR
Administrative Judge