



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



In the matter of:)	
)	
)	ISCR Case No. 18-02839
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
 For Applicant: *Pro se*
 10/28/2019

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns raised by his tax liens and other delinquent debts. National security eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on July 20, 2017. On December 21, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations). Applicant answered the SOR on March 6, 2019, and requested a hearing before an administrative judge (Answer). Department Counsel sent Applicant an amendment to the SOR on May 2, 2019, and added two allegations under Guideline F. Applicant responded to the SOR Amendment on June 21, 2019. The Government was ready to proceed on June 24, 2019, and the case was assigned to me. On June 27, 2019, I issued an order to both parties to produce their evidence by July 22, 2019. On July 8, 2019, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for August 6, 2019. I convened the hearing as scheduled.

Government’s Exhibits (GE) 1 through 7 were admitted without objection. Applicant testified, and Applicant’s Exhibit (AE) A was admitted without objection. The SOR Amendment and Answer were marked as Hearing Exhibit (HE) I. I received the complete

transcript (Tr.) on August 20, 2019. I held the record open until October 8, 2019, to allow Applicant to submit additional documentation. On October 6, 2019, Applicant requested an extension for the submission of post-hearing documents. Department Counsel objected to an extension, given the length of time the record was held open, and I sustained the objection. I marked this email exchange as HE II. Applicant timely submitted AE B and C, which were admitted without objection, and the record closed.

Findings of Fact

Applicant is 63 years old. He received a bachelor's degree in 1980 and a master's degree in business administration in 1985. He has been married to his wife since 1982, and they have an adult daughter. From 1989 until May 2016, Applicant served in the U.S. Air Force (USAF), the USAF Reserves, and the Air Force National Guard (AFNG), and he retired as a colonel. He also worked as a federal civil servant, for which he receives a pension. He has worked as a part-time flight instructor for a defense contractor since June 2016. He currently does not hold a security clearance, but previously held a security clearance from the early 1980s until 2016. (GE 1; Tr. 9-12, 18-22)

Applicant attributes his financial issues to five work-related moves between 2007 and 2014. During this period, he was geographically separated from his family and supported his wife and daughter in their primary residence. Starting in 2016, a construction project on his vacation home contributed to his financial problems. Additionally, his mother was ill in 2018 and 2019, which contributed to his financial obligations. (Answer; GE 1; GE 2 at 2; AE C; Tr. 23-27, 38)

In October 2012, the Internal Revenue Service (IRS) filed a \$70,701 tax lien against Applicant. Applicant admitted at the hearing that he learned of the lien in 2017, when the IRS sent him a letter and garnished his pay. He did not disclose this debt in his 2017 SCA. He claimed in his May 2018 personal subject interview that he was unaware of the lien due his frequent moves, despite his wife residing in their primary and permanent residence. (GE 2 at 2; GE 5 at 3; GE 7 at 4; Tr. 22-27, 31, 35-36)

During his May 2018 interview, Applicant also told the investigator that he was working with an accountant to resolve his outstanding tax liens, and he had a quarterly payment arrangement with the IRS. However, he admitted at the hearing that he had yet to meet with an accountant or tax specialist. In late 2018, after the SOR was issued, he did have a couple of phone conversations with a military financial counselor to address his outstanding delinquent debts, but she moved to another base. Despite claims that he anticipated that the lien would be resolved within thirty days of his March 2019 Answer to the SOR, he had not consulted with another financial counsel. (GE 7 at 4; Tr. 27-33)

As of the hearing, Applicant had not yet contacted the IRS regarding the lien, nor had he hired an accountant or tax specialist. He was unsure which tax years were included in the lien, and he believed the tax lien might be a tax obligation for a property he sold in 2011. He admitted that he should have been more aware of his financial obligations and done more to resolve the problems. (GE 2 at 2; GE 5 at 3; GE 7 at 4; Tr. 22-23, 28-36)

At the hearing, Applicant admitted that he had not yet filed his 2018 federal and state income tax returns, nor had he filed for an extension. Additionally, he filed his income tax returns late for at least two additional tax years, but he did not remember which specific years were filed late. Applicant's May 2019 credit bureau report indicated that a credit card debt and his car loan were 30 to 60 days delinquent. These additional tax issues and debts were not alleged in the SOR, and they will not be considered as disqualifying in determining Applicant's security worthiness. However, these facts can be considered in determining Applicant's mitigation, and evaluation under the whole-person concept. (GE 3 at 2, 5; Tr. 34, 36-39)

In August 2019, a state income tax lien of \$14,151 was filed against Applicant for tax year 2017. Applicant owns his principle residence, and the mortgage for this property is alleged in SOR allegation 1.d. He has also owned a vacation home since 1976. During the summer of 2016, his vacation home was torn down, and Applicant built a new vacation home. In 2017, Applicant withdrew approximately \$150,000 from his Thrift Savings Plan (TSP) account to fund the construction project at his vacation home. He did not account for the associated tax liability for the early withdrawal, and he did not have the funds to pay the subsequent state tax liability. (GE 6; AE C; Tr. 42-47)

Applicant has claimed that in March or April 2019, he established a \$2,060 monthly payment plan with his state to resolve the lien. At the hearing, he stated that the balance was \$6,000, and in his post-hearing submission he claimed that only one payment remained for the lien. However, he provided no supporting documentation to demonstrate payment or resolution. (GE 6; AE C; Tr. 42-47)

Applicant opened a revolving credit card account in June 2015, and it became delinquent in July 2018. The \$4,000 credit card balance was charged off by the creditor at an unknown date. Applicant used the credit card while he and his wife were rebuilding their vacation home, and it became delinquent due to additional construction expenses and elder-related expenses for his mother. Applicant testified that during the spring of 2019, he established a \$500 monthly payment plan. He provided no supporting documentation to demonstrate payment or resolution. (GE 3 at 2; GE 4 at 2; Tr. 48-49, 53-54)

The Amended SOR alleged that Applicant was \$16,886 past due on his primary home's mortgage, and the total outstanding balance was \$379,838. Applicant and his wife purchased this home in August 2007. Applicant claimed that he fell behind on the \$3,377 monthly payments in approximately June 2017, due to his military moves between 2007 and 2014, and the additional expenses associated with living separately from his family. However, it appears based upon the record evidence that Applicant fell behind on his mortgage payments during the remodel of his vacation home. (GE 2 at 5; GE 3 at 3; GE 5 at 5; Tr. 49, 52-54)

After making three timely payments between May and July 2019, Applicant entered into a loan modification with the mortgage holder, effective August 1, 2019. Applicant's unpaid installments, interest, late charges, fees and costs, and advanced unpaid property taxes and insurance totaled \$28,591.48. This balance was rolled into the outstanding

principle, with the exception of \$1,702.18, which was forgiven. The new total outstanding balance is \$394,900, and the new monthly payments are almost \$3,000. Applicant did not provide proof of payments for this debt. (AE A; Tr. 16, 49-52)

Applicant attributed his failure to timely resolve his tax obligations and other delinquent debts in a timely manner to the pressure of his military positions during his last several years of service. He recognized that he has avoided resolving his financial issues and instead spent too much time doing volunteer work. He does not follow a written budget and has not sought any significant credit counseling. (Tr. 39-40, 56, 59-61)

Applicant's receives approximately \$76,000 annually from his military pension; his civil service pension is \$32,000 annually; and he earns approximately \$65,000 a year from his part-time defense-contractor position. Applicant's wife recently started working part-time as a secretary at a local school. He anticipated that this position would last between one and two months. (AE C; Tr. 11, 20-21, 56)

Applicant volunteers at his church and is actively involved within his community. He received numerous awards and decorations related to his military service, including, but not limited to: Legion of Merit Medal; Meritorious Service Medal with six oak leaf clusters; Air Medal with two oak leaf clusters; Air Force Commendation Medal with one oak leaf cluster; Air Force Achievement Medal; and Air Force Outstanding Unit Award with seven oak leaf clusters. Applicant also served in several command level positions during his 35 years of service in the USAF, USAF Reserves, and AFNG. (AE B; Tr. 59-61)

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 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 concern under Guideline F (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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The record evidence of Applicant's tax liens and delinquent debts establish three disqualifying conditions under AG ¶ 19:

- (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.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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;
- (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 experienced financial issues related to his USAF service, expenses associated with the construction of his vacation home, and the care of his mother. Although his service and elder costs were conditions beyond his control, his choice to tear down his vacation home and rebuild it was within his control. The state tax lien, the charged-off credit card, and the failure to stay current on his primary mortgage were all

the result of choices he made associated with the building project, despite evidence that he had ample resources to pay his financial obligations.

Applicant indicated in his Answer, post-hearing documentation, and at the hearing that he was close to resolving the state tax lien and charged-off credit card and he had rehabilitated the mortgage for his primary home. He failed to provide documentation to support these claims; therefore, the alleged debts remain a current and ongoing issue.

Applicant's most recent credit bureau report indicates he fell behind on two additional debts in the months before his hearing. (GE 3) He has not filed his 2018 state and federal income tax returns, nor did he request an extension. These issues demonstrate that there are no clear indications that Applicant's financial problems are resolved; rather, they are current and ongoing. Applicant did not establish that he sought credit counseling in a consistent and meaningful manner. Mitigation under AG ¶¶ 20(a), 20(b), 20(c), 20(d), 20(e), and 20(g) was not established.

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 including his 35 years of honorable service in the USAF, USAF Reserves, and AFNG. I also considered his extensive service and volunteer efforts at his church and within his community.

I conclude Applicant has not met his burden of proof and persuasion. He did not mitigate the financial considerations security concerns or establish his eligibility for a security clearance.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraphs 1.a-1.d: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant's national security eligibility for access to classified information. Eligibility for access to classified information is denied.

CAROLINE E. HEINTZELMAN
Administrative Judge