



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No: 19-00277
)
Applicant for Security Clearance)

For Government: Brittany White, Esq., Department Counsel
For Applicant: *Pro se*

09/11/2019

Decision

DAM, Shari, Administrative Judge:

Applicant has a long history of failing to file Federal and state income tax returns, and failing to pay his tax liens and other debts. He did not refute or mitigate the resulting financial security concerns, or the personal conduct security concerns related to his failure to disclose requested financial information. National security eligibility for access to classified information is denied.

Statement of the Case

On April 1, 2019, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. The action was taken under Executive Order 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective on June 8, 2017.

Applicant answered the SOR in writing (Answer) on April 20, 2019, and requested a hearing before an administrative judge. On July 22, 2019, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On July 26, 2019, DOHA issued a Notice of Hearing setting the case for August 15, 2019. The case was heard as

scheduled. Department Counsel offered Government Exhibits (GE) 1 through 8 into evidence. Applicant testified. He did not offer any exhibits. All exhibits were admitted into evidence. DOHA received the hearing transcript (Tr.) on August 23, 2019

Findings of Fact

In his Answer, Applicant admitted the allegation in SOR ¶ 1.a and denied the remaining allegations in SOR ¶ 1. He denied the two allegations in SOR ¶ 2.

Applicant is 57 years old and has been married since 1983. He and his wife have two adult children. He earned a bachelor's degree in 1987. In July 2017, he started a position with a defense contractor. Prior to this employment, he had been self-employed since 2012. Before starting his business, he was a contractor for different companies and also experienced periods of unemployment. (Tr. 21-27; GE 1)

Based on credit bureau reports (CBR) from August 2017 and January 2019, and Applicant's admissions, the SOR alleged four delinquent commercial debts, and stated four additional allegations related to his unfiled Federal and state income tax returns and unpaid Federal tax liens. (GE 2, GE 3, GE 4, GE 5) The status of those financial matters is as follows:

SOR ¶ 1.a: The \$28,865 second mortgage debt has been delinquent and charged off since March 2014. Applicant has no intention to resolve it until he sells the house at a future date. (Tr. 31-33; Answer) This allegation is unresolved.

SOR ¶ 1.b: This \$947 credit card debt became delinquent in August 2016. Applicant said he settled it for \$521 and paid it in March 2019. (Tr. 33-35) This allegation is resolved.

SOR ¶ 1.c: This charged-off \$453 credit card debt became delinquent in 2016. Applicant disputes the charge, but provided no evidence substantiating a basis for the dispute. (Tr. 35-37; GE 3; Answer) This allegation is unresolved.

SOR ¶ 1.d: The \$280 collection account for an unpaid phone bill became delinquent in 2017. Applicant said he disputes this charge and has no intention of paying it, but provided no substantiation. (Tr. 37-39; Answer) This allegation is unresolved.

SOR ¶ 1.e: Applicant has not filed his Federal and state income tax returns since 1992. He stated that he declined to file them because he does not consent to being taxed on his labor, such as a payroll tax; hence, he believes he is not legally required to file the the returns. (Tr. 40-45; Answer) This allegation is unresolved.

SOR ¶ 1.f: Applicant has not paid the \$38,215 Federal income tax lien entered against him in October 2018. Applicant does not intend to pay the debt because he does not believe he has a legal obligation to pay taxes on his labor, unless he consents to the tax. (Tr. 45-46; Answer) This allegation is unresolved.

SOR ¶ 1.g: Applicant has not paid the \$61,297 Federal income tax lien entered against him in October 2005. He does not intend to pay the debt because he does not believe he has a legal obligation to pay taxes on his labor, unless he consents to the tax. (Tr. 45-46; Answer) This allegation is unresolved.

SOR ¶ 1.h: Applicant has not paid the \$351,636 Federal income tax lien entered against him in April 2004. He does not intend to pay the debt because he does not believe he has a legal obligation to pay taxes on his labor, unless he consents to the tax. This large lien is partially attributable to capital gains he earned in the early 2000s, in addition to income from employment. (Tr. 45-46, 58-60; Answer) This allegation is unresolved.

SOR ¶ 2 alleges Applicant deliberately denied and failed to disclose his failure to file his tax returns and his tax liens on his August 2017 security clearance application (SCA). In that SCA, he denied that he had not filed Federal and state income tax returns since 1992, as alleged in SOR ¶ 1.e. Applicant asserted that he did not falsify his SCA about this issue because he did not believe he was legally required to file tax returns, as he did not consent to being taxed on employment income. (Tr. 48-49; GE 2; Answer)

In his August 2017 SCA, Applicant also denied that tax liens had been placed on his property for tax years 2011, 2014, 2015, 2016, and 2017. He did not disclose that he was indebted to the United States for Federal income taxes in the total amount of \$451,148 for the Federal tax liens alleged in SOR ¶¶ 1.f, 1.g, and 1.h. He has since denied that he deliberately failed to disclose that information. He stated that he was unaware of the unpaid taxes and liens. He claimed that he ignored notices he and his wife received relating to them. He asserted that he is not required to file returns or pay taxes on any payroll money he received over the years. (Tr. 47-51; GE 2; Answer)

Applicant did not pay income taxes from 1992 until 2001. At that time, he was purchasing a home and in order to obtain a mortgage, he paid the Internal Revenue Service (IRS) \$6,500 to resolve a tax lien and purchase a house. (Tr. 52) In March 2019, he said he mistakenly paid the IRS about \$2,500 from his salary because he did not fill out his W-2 Form correctly and failed to claim he was exempt from paying taxes. Other than those two instances, 2001 and 2019, he has not paid Federal or state income taxes since 1992. (Tr. 53-55)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying and mitigating conditions, which are useful 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, these guidelines are applied 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. 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.” 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.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states that an “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, and has the ultimate burden of persuasion as to obtaining 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 protect or 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 Executive Order 10865 provides that an adverse decision 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18:

Failure or inability 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 information. Financial distress can also be caused by 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 acts to generate funds.

AG ¶ 19 sets out disqualifying conditions that could potentially raise security concerns. Three are potentially applicable in this case:

- (a) unwillingness to satisfy debts 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 has a history of deliberate failure to file required Federal and state income tax returns, beginning in 1992 and continuing to the present. He failed to pay large Federal income liens that were entered against him in 2018, 2005, and 2004. He also failed to resolve three delinquent commercial debts. The evidence is sufficient to raise significant security concerns under the above disqualifying conditions.

After the Government produced substantial evidence of the disqualifying conditions, the burden shifted to Applicant to produce evidence and prove mitigation of the security concerns. AG ¶ 20 sets out conditions that could potentially mitigate the resulting financial security concerns under this guideline:

- (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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or 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 has not resolved his outstanding debts that became delinquent between 2014 and 2017. He has not filed Federal and state income tax returns since 1992 (other than in 2001 and 2019), or paid his outstanding 2018, 2005, and 2004 tax liens. He has no intention to pay or resolve these tax obligations, or other delinquent debts. His failure to do so casts doubt on his judgment. There is no evidence to establish mitigation under AG ¶ 20(a). Applicant's financial delinquencies and refusal to responsibly manage his taxes and other delinquent debts have been within his control. AG ¶ 20(b) does not apply. Applicant has not participated in credit or financial counseling, and there is no evidence that the financial concerns alleged in the SOR are under control. AG ¶ 20(c) does not apply.

Other than paying off one credit card debt, Applicant has not made good-faith efforts to responsibly resolve his delinquent debts and tax issues. AG ¶ 20(d) does not provide mitigation. Applicant stated he will not pay the debts alleged in SOR ¶¶ 1.c and 1.d because he disputes them. He did not submit evidence to document a valid basis for those disputes, or other attempts to resolve those debts. AG ¶ 20(e) does not apply. Applicant has no intention to file his delinquent Federal and state income tax returns or pay any of his outstanding tax liens. There is no evidence to establish mitigation under AG ¶ 20(g).

Guideline E: Personal Conduct

AG ¶ 15 explains the security concerns relating to personal conduct:

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.

AG ¶ 16 describes a condition that could raise a security concern and may be disqualifying 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 contends that he denied, and failed to disclose, information about his unfiled tax returns or report the tax liens filed against him because he believes he does

not have a legal obligation to do so since he has not consented to the payroll tax. He acknowledged that he ignored notices sent to his home from taxing entities pertinent to those issues. Regardless of whether he believes he is not legally responsible for filing returns or paying taxes, he knew he had outstanding Federal and state tax issues, which he was required to disclose in his August 2017 SCA. He deliberately omitted that information in his SCA. His attempted justification for not providing the information is not persuasive. The evidence establishes the above disqualifying condition.

AG ¶ 17 provides two conditions that could mitigate that security concerns under this guideline:

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant failed to fully and frankly answer questions on his SCA about not filing his tax returns and having tax liens entered against him. He did not provide credible evidence that his false responses on his SCA were based on the advice of reputable legal counsel, tax professionals, or any other person with professional responsibilities for advising or instructing persons on security clearance processes. His false statements regarding his tax issues and outstanding debts cast serious doubt on his fitness to hold a security clearance. He did not establish mitigation under the above conditions.

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) 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 national security eligibility must include 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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is an intelligent and articulate 57-year-old man, who has been working for his current employer since July 2017. Despite becoming aware of the Government's security concerns regarding an applicant's history of tax compliance and delinquent debts when he submitted his SCA in August 2017, Applicant took no action to address his 27-year history of non-compliance or to resolve his \$451,148 tax debt. Although he repeatedly asserted that he is not required to file tax returns or pay taxes on income derived from his labor, and that he has no intention to do so, he provided no credible evidence from the IRS or a state revenue agency that his position is legally supportable or that he is exempt from income tax laws and obligations. His decision to falsify requested information about those matters in his SCA was deliberate.

At this time, Applicant has not established a record of responsibly following tax laws and managing related financial obligations. His long history of non-compliance with a fundamental legal obligation to file and pay taxes, beginning in 1992, is significant. The DOHA Appeal Board has held that:

Failure to file tax returns suggests that an applicant has a problem with complying with well-established government rules and systems. Voluntary compliance with these things is essential for protecting classified information. ISCR Case No. 14-04437 at 3 (App. Bd. Apr. 15, 2016). Someone who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. *See, e.g.,* ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). *See Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961).

ISCR Case No. 12-10933 at 3 (App. Bd. June 29, 2016).

The record evidence leaves me with serious doubts as to Applicant's judgment and suitability for a security clearance. Applicant failed to mitigate the security concerns arising under the financial considerations and personal conduct guidelines.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1: Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c through 1.h:	Against Applicant
Paragraph 2: Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	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 Applicant a security clearance. National security eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge