



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



In the matter of:)
)
) ISCR Case No. 19-01429
)
Applicant for Security Clearance)

Appearances

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

04/15/2020

Decision

LYNCH, Noreen A., Administrative Judge:

This Government asserted allegations arising under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

On July 26, 2019, in accordance with Department of Defense (DoD) Directive 5220.6, as amended (Directive), and the National Security Administrative Guidelines (AG) implemented on June 8, 2017, the DoD issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. The SOR further informed Applicant that, based on information available to the Government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals. (DOHA) The case was assigned to me on January 6, 2020. On February 4, 2020, DOHA issued a notice scheduling the hearing for February 28, 2020. The hearing convened as scheduled.

Department Counsel offered Government Exhibits (GE) 1 through 5, which were admitted into the record without objection. Applicant testified and submitted Applicant's

Exhibits (AE) A through C, which were marked and admitted into the record without objection. At Applicant's request, I held the record open after the hearing to allow him the opportunity to submit additional information. He timely submitted documents that I marked as AE D and E and admitted without objection. The transcript was received on March 9, 2020. The record closed on March 31, 2020.

Findings of Fact

Applicant, age 62, is married and has three adult children. He served in the U.S. Navy for 23 years, retiring in 2001. He obtained his undergraduate degree in 2009 and received his master's degree in the same year. (Tr. 18) Applicant completed his most recent security clearance application on July 3, 2016. He has held a security clearance since 1978. He has been employed as a contractor for about 20 years. Applicant has been employed with his current employer since 2000 as a program manager. (GE 1)

The SOR alleges that Applicant is indebted to the Federal Government for past-due income taxes for tax years 2009 through 2017 for a total amount of \$195,720. (1.a-1.h.) Applicant admitted those SOR allegations but disputed the total amounts due. . The SOR further alleges that Applicant has a past-due mortgage account in the amount of \$10,951 and two collection student loan accounts. (1.i-1.k) Finally, allegation 1.l reflects a judgment placed in 2017 in the amount of \$7,733.

Applicant acknowledged the Federal tax debt, but presented documentation that, as of February 2020, the amount due is approximately \$71,417.79. (AE B) He stated that he is working with a tax attorney to establish a repayment plan. The tentative start date of the plan is March 28, 2020. The terms are \$1,440 a month for the first year, to increase to \$2,375 a month thereafter. (AE B) Applicant contacted a tax relief company in 2006 and entered various installment plans, but never maintained them. He stated that in 2009 he was in a repayment plan, but he stopped making payments after his wife was laid off from her job. (Tr. 23) In total, Applicant had made about six payments. In 2012, after the Government issued tax liens against him, he made a \$1,200 payment. He made no payments in 2013, but he started another installment plan in February 2014. (Tr. 23) He made one payment in 2016 for \$300 and a few payments in 2018. There is no record evidence of any other voluntary payments. His income and his wife's income during these taxable years averaged about \$200,000 annually. (Tr. 26) Applicant's Navy retirement pay has been garnished since 2019 in the amount of \$400 a paycheck. (Tr. 21)

Applicant believes his tax problems started in about 2006 when he received a \$19,000 tax refund the previous year. (Tr. 14) His wife was not working and he believed that there was some issue concerning a mortgage company overcharging on interest. He stated that after that, because he never had owed taxes, he did not file future returns. He now admits that he used poor judgment. (Tr. 35) He disclosed his tax issues on his security clearance application. Apparently he filed tax returns in 2010 and learned how much he owed. He had also been advised that he should increase his withholdings and decrease his exemptions, but he did not do that. (Tr. 27)

SOR allegation 1.i is a home mortgage account that is alleged to be past due in the amount of \$10,951. Applicant has a repayment plan with the bank. He presented a document showing that his mortgage is \$2,867 and is up to date as of February 2020. (AE C) This issue began in 2018, when he noted that he “was struggling with things.” (Tr. 41) He made a lump sum payment and the loan was modified to a lower interest rate. (Tr. 43)

SOR allegations 1.j and 1.k are two Federal student loan accounts that have been placed for collection, for \$64,762 and \$16,933. . He obtained these loans when he attended undergraduate and graduate school in about 2007-2009. He stated that he fell behind due to his wife’s loss of employment on at least four occasions. (GE 1) In his security clearance application, Applicant disclosed that he was using his 401(k) money to repay the student loans at \$900 a month. (GE 1) Applicant stated at the hearing that the last payment he made was in June 2015. He stopped paying because the loans were no longer deferred. However, he has been employed steadily since 2000 making a good salary. Applicant explained that he had financial difficulties due to the tax issues. He also asserted that about \$35,000 of the student loan debt was paid over the last two years, at about \$700 per pay period, through a wage garnishment. He provided no documentation to support this claim beyond AE E, a statement showing that only interests had been paid on the loans. (AE E; Tr. 39-40)

SOR allegation 1.l is a judgment placed in 2017 in the amount of \$7,733.30. Applicant purchased computer equipment in 2015. At first money for payments were taken from his paycheck. He was vague about the details. He also noted that the creditor might have sent him bills, but his address changed. He forgot about it, and then a lien was placed. (Tr. 44) He believes the creditor garnished his pay and that the debt is almost paid. He believes that he bought about \$10,000 or \$12,000 in equipment from the creditor over the years. (Tr. 44)

Applicant has credit cards and some personal loans. He bought his wife a new car in 2015. He also took a trip to the Caribbean in 2014. (Tr. 52) Applicant and his wife earn an approximate annual income of over \$200,000, though her income varies. He has had steady income for the years since 2000, sometimes making as much as \$239,000 annually. He knows that his wife was unemployed about four times, but she is now employed and earns about \$79,000 annually. He has a sizeable net remainder each month (\$2,200). He did not submit a budget and made no mention of financial counseling. He did not know the amount in either his checking account or his 401(k). (Tr. 51)

Applicant submitted as post-hearing documentation a power of attorney for the tax relief company signed in 2018. He also sent copies of his 2015, 2016, and 2017 federal income tax returns signed March 2019. (AE D)

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 (AG) list

potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of EO 10865, "Any determination under this order adverse to an applicant shall be a determination 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 this guideline 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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his credit reports, establish three disqualifying conditions under this guideline: AG ¶ 19(b) ("unwillingness to satisfy debts regardless of the ability to do so"), AG ¶ 19(c) ("a history of not meeting financial obligations"), and AG ¶ 19(f) ("failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay income tax as required.")

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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; and

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

Applicant admitted that he had no good reason for not filing his Federal income tax returns as required or paying the amounts due, and noted that he had used poor judgment. His debts did not occur due to conditions beyond his control but for his wife's

occasional unemployment. However, he owes a substantial amount of money in Federal income tax and Federal student loan debt. He made no voluntary payments on his student loans, but rather his Navy retirement was garnished. He has been consistently employed earning a good salary and has a Navy retirement pension. He has had repayment plans in place for his Federal tax debt, but does not currently have a repayment plan in place with the IRS. In addition, his federal student loans have been garnished. His most recent (2017) tax transcript shows a combined earned income of \$300,000. For close to a decade, he underpaid his federal tax debt despite being aware of his obligation each year. He consistently under-withheld for many years.

Applicant modified his mortgage and is now current on his payments. He only recently engaged a tax attorney to address his past-due taxes. Beyond that, there is little evidence to show that Applicant has made a consistent or concerted effort to resolve any of his financial issues. He does not have a track record of financial responsibility. His wages are being garnished by two federal agencies. He has shown a disregard for the legal requirement to file his income tax returns and to pay the income taxes due. The tax issues led to other delinquencies and Applicant could provide no good reason as to why he did not act earlier to resolve the situation.

Applicant has not acted responsibly and was not proactive about his financial issues until about 2016, six years after he first learned of the tax issues. Without documentary evidence reflecting more effort, he has not demonstrated a track record of attempts to address his financial problems and there is no indication that his financial situation is under control. AG §§ 20(a)-20(d) and 20(g) are not established. Applicant's delinquent debts remain unresolved, although through garnishments the amount of taxes and other delinquencies have been lessened. He is now trying to work with a tax attorney to enter into yet another IRS repayment plan. He stated that he just made a mistake, but has tried to mitigate the issues and should not lose his security clearance. He has not met his burden of proof in this case. For these reasons, I find SOR §§ 1.a through 1.i. against applicant.

Whole-Person Concept

Under AG § 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, including Applicant's career in the U.S. Navy and his 20-year career in the defense industry, I conclude that Applicant has not mitigated the security concerns raised by his financial indebtedness. I conclude that it is not in the national interest to continue Applicant's eligibility for access to classified information.

Formal Findings

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

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.i:

Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is denied.

Noreen A. Lynch
Administrative Judge