



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



In the matter of:)
)
) ISCR Case No. 19-01731
)
Applicant for Security Clearance)

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

02/25/2020

Decision

LYNCH, Noreen A., Administrative Judge:

This case alleges security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

On June 21, 2019, in accordance with DoD Directive 5220.6, as amended (Directive), and Administrative Guidelines (AG) implemented on June 2017, the Department of Defense 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. The case was assigned to me on November 20, 2019. The Department of Defense Office of Administrative Hearings (DOHA) issued a notice of hearing on December 19, 2019, scheduling the hearing for January 14, 2020. The Government offered Exhibits (GE) 1 through 8, which were admitted into the record without objection. Applicant testified in his own behalf and presented two documents which were marked AE A and B, and admitted into the record without objection. At Applicant's request, I held the record

open until January 28, 2020, for additional information. The transcript was received on January 23, 2020. The record closed on January 28, 2020. Applicant submitted additional documentation AE C, which was admitted into the record without objection.

Findings of Fact

Applicant, age 38, is married and has no children. He obtained his undergraduate degree in 2004. Applicant completed his security clearance application on August 16, 2017. He has held a security clearance since 2008. He has been employed with his current employer since January 2018 as a project analyst. (GE 1)

The SOR alleges that Applicant failed to file, as required, federal tax returns for tax years 2010, 2013, 2014, 2016, and 2017; that he is indebted to the federal government for delinquent taxes in the amount of \$675 for tax year 2010; that he is indebted to the federal government for delinquent taxes in the amount of \$6,117 for tax year 2013; that he is indebted to the federal government for delinquent taxes in the amount of \$4,554 for tax year 2014; that he is indebted to the federal government for taxes in the amount of \$10,966 for tax year 2015; that he is indebted to the federal government for delinquent taxes in the amount of \$5,209 for tax year 2016; that he is indebted to the federal government for delinquent taxes in the amount of \$6,353 for the tax year 2017; that he is indebted to the state for delinquent taxes in the amount of \$1,056; that he has a charged-off account in the amount of \$9,870; that that he has a delinquent medical account in the amount of \$138; and that he is indebted for a collection account in the amount of \$290. Applicant admitted the SOR allegations with the exception of 1.a, 1.i, and 1.j.

Applicant acknowledged his delinquent tax debts, but stated that he has filed his income tax returns for the years in question when he learned about them through the security process. (Tr. 16) At that point, he set up payment plans for each of the years with the IRS. (Tr. 17) He also stated that one account has been charged off and one account cannot be located. (Answer) SOR allegation 1.a.

In 2017, Applicant filed his 2010 Federal income tax return, and he owed \$675 for that tax year. He entered into an installment agreement with the IRS in June 2017, but he has not made any payments. (Tr. 22) He also entered into an agreement in 2017 for tax owed (\$6,117) from 2013. He agreed to pay \$225 a month, but the agreement was cancelled in 2018. (GE 4) He has not made any other payments. For the tax period 2014, Applicant owed \$4,554 and in 2015 he established an installment agreement with the IRS. He made about eight payments between January 2016 and June 2016. During that time three checks were dishonored, and by October 2016, Applicant was no longer in payment status. (Tr. 25) He had no good reason for not continuing the payments. Applicant responded that "life" just happened. (Tr. 25) At the time, Applicant was earning about \$84,000 a year. His wife also worked and the combined income was \$124,816. (Tr. 26) Applicant initiated another tax agreement in 2015, which was abandoned by 2018. No payments were made. (GE 5) In May 2017, the IRS initiated a second notice of intent to levy. Then, in June 2017, Applicant entered into an installment agreement for a combined 2010, 2013, 2014 and 2015 tax debt. This was prior to completing his 2017 security clearance application. No payments were made. (Tr. 29) The 2016 Federal

income tax return was filed in 2018. Applicant owes \$5,209 and has made no payments. The same pattern continued for tax period 2017. In May 2019, Applicant entered into an installment agreement with the IRS for delinquent taxes stemming from 2010, 2013, 2014, 2015, 2016, and 2017. (Tr. 29) The agreed upon payment was \$415 monthly to be deducted from his salary. He stated that no payments were deducted as scheduled and no payments made, and he does not understand why that happened. (Tr. 30) He is still under a 2019 payment agreement. (GE 6)

Applicant's response to why he waited until 2019 to re-initiate an installment agreement for delinquent IRS taxes was humiliation and being humbled. (Tr. 31) He admitted that he has been quite "lax." (Tr. 31)

In Applicant's 2018 subject interview, he explained that he was not aware of the filing issue because his wife always handled the finances. He also stated that he did not intentionally not file because he thought his wife filed and also set up payment plans. (GE 2)

As to SOR allegations 1.b through 1.g, the Federal delinquent tax debts of \$6,117, \$4,554, \$10,966, \$5,209, and, \$6,353, Applicant attached a proof of payment plan. (File) However, as discussed above each installment plan was ended abruptly and no continuing payments made. (GE 5, 6)

As to SOR allegation 1.h, Applicant admitted his state delinquent taxes in the amount of \$1,956, and he attached a 2019 proof of payment plan to settle the debt. (Answer) He was to pay \$385 a month to the comptroller of the state. No payments have been made. (Tr. 32; GE 7, 8)

Applicant denied the debt in SOR 1.i, a debt for \$9,870 because it is charged off. However, Applicant produced a document that reflected the loan amount was cancelled in an IRS Form 1099-C. (AE A)

Applicant denied the medical account in SOR 1.j for \$138, because he has not been able to locate the account and it does not appear on his 2017 credit bureau report. (Tr. 33) He has not made any attempts to contact the creditor even though it appears on a newer credit report. (Tr. 34)

As to SOR 1.k, a collection account in the amount of \$290, Applicant paid the account on August 2, 2019 and provided documentation to confirm. (AE B)

Applicant currently earns about \$93,000 a year and he has been consistently employed. He has not had any financial counseling. He submitted a budget with his packet of documents (GE 3), showing a monthly net remainder of \$904. He does not have a savings account. He has not filed his 2018 Federal income tax return but has asked for an extension.

Applicant submitted as post-hearing documents an installment agreement and a 2018 joint filing for that tax year. He is scheduled to make a monthly payment of \$415, which will be automatically deducted from his bank account. (AE C)

As to state taxes, Applicant submitted documentation that the total debt has been transferred to a collection agency and he made a payment of \$215 on January 24, 2020 toward the total delinquent debt of \$1,180.90. He averred that consequent payments would be made in the amount of \$241 on the 15th of each month and deducted from his bank account.

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(a) (“inability to satisfy debts”), and AG ¶ 19(c) (“a history of not meeting financial obligations”) and 19(f) (“failure to file or fraudulently filing annual Federal, state, or local income tax returns as required or failure to pay annual Federal, state or local 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's delinquent tax debts are long-standing. He did not file his Federal income taxes for a number years in a timely fashion. He started several installment plans with the IRS, but never continued them. He admitted that he had no good reason for not filing and also that he relied on his wife to handle financial affairs. He stated that he was just lax and had no good reason for not paying the taxes. He stated that he learned of the issue when he was going through his security clearance process. However, filing income taxes is a basic duty for every citizen. The issues were discussed in his 2018 subject interview. There does not appear to be any circumstance that occurred beyond his control. He has been consistently employed. Applicant stated that he did not file his income tax returns or pay taxes because his wife usually did them and that "life" happened. Thus, from the record, it cannot be determined if he applied any good-faith efforts until last year. Without documentary evidence of more efforts, he has not demonstrated a track record and there is no indication that his financial situation is under control. He has not received financial counseling. AG ¶ 20(a)- 20(d) are not established. Applicant's delinquent debts remain unresolved. Although he promises to address them in his new installment agreement, there is little weight given to this information given his past history of entering an agreement and not making the payments or just stopping abruptly. As stated, he has not received financial counseling and there are no clear indications that he will follow through on his payment arrangement with the IRS or the state. Applicant failed to meet his burden to mitigate the financial concerns set out in the SOR. For these reasons, I find SOR ¶¶ 1.a through 1.j. 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 work career and continuing late tax filings and inability to maintain an installment agreement, I conclude that Applicant has not mitigated the security concerns raised by his financial indebtedness and inconsistency with payment plans for federal taxes with the IRS. I conclude that it is not with the national interest to grant him 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.j:
Subparagraph 1.k:

Against Applicant
For 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