



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



In the matter of:)
)
) ISCR Case No. 19-02937
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Department Counsel
For Applicant: *Pro se*

06/23/2020

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant mitigated personal conduct concerns, but did not mitigate financial concerns relating to his accumulated federal tax debt. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On November 25, 2019, the Department of Defense (DoD) Consolidated Central Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant detailing reasons why under the financial considerations and personal conduct guidelines the DoD could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); *Defense Industrial Personnel Security Clearance Review Program*, DoD Directive 5220.6 (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on January 16, 2020, and elected to have his case decided on the basis of the written record., in lieu of a hearing. Applicant received the File of Relevant Material (FORM) on April 3, 2020, and interposed no objections to the materials in the FORM. He did not supplement the record.

Summary of Pleadings

Under Guideline F, Applicant allegedly is indebted to the Federal Government for a tax lien entered in 2012 for the approximate amount of \$52,063. (Item 1) Allegedly, this tax lien remains unresolved and outstanding.

Under Guideline E, Applicant allegedly failed to disclose the federal tax lien entered against him in 2012 in the electronic questionnaire for investigations processing (e-QIP) he completed in June 2017. By failing to disclose the federal tax lien in his executed e-QIP, Applicant allegedly deliberately falsified his e-QIP.

In his response to the SOR, Applicant admitted the allegations of indebtedness with explanations, but denied falsifying his 2017 e-QIP. He claimed he has a tax firm working to resolve his federal tax dispute over an imposed federal tax lien whose enforcement will expire in August 2020. Applicant further claimed that he has continued to dispute any federal tax liability for the alleged tax covered by the imposed federal tax lien and misunderstood the question posed to him in the 2017 e-QIP he executed. (Items 2 and 7)

Findings of Fact

Applicant is a 58-year-old systems engineer for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in June 1996 and divorced in May 2009. (Items 3-4) He has three children from this marriage (ages 20, 17, and 15). He remarried in October 2012 and has five stepchildren from this marriage (ages 39, 28, 18, 15, and 12). (Items 3-4) Applicant earned a bachelor's degree in August 2005. Applicant reported no military service. (Items 3-4) Since February 2007, Applicant has been employed as a multidiscipline system engineer lead by his current defense contractor. (Items 3 and 4) He reported no prior employment, and he has held a security clearance since 1990. (Item 4).

Applicant's finances

In December 2012, Applicant incurred a \$52,063 federal tax lien. (Items 5-7) He disputes the merits of this lien that covers delinquent taxes owed on a \$3,000 charitable contribution he made to his church in 2003 with funds withdrawn from his 401(k)

retirement account. (Item 7) The Internal Revenue Service (IRS) declined to credit Applicant with a non-taxable donation because it found the church beneficiary to be not properly structured for eligibility under Title 26 U.S.C. § 501(c)3 to receive non-taxable donations. (Item 7)

Section 501(c)(3) tax exemptions apply to entities that are organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes. Where applicable, the IRS provides a deduction for federal income tax purposes for some donors who make charitable contributions. Being denied a tax exemption for reasons not fully detailed by Applicant, he has continued to dispute the IRS's declination to treat his donation as a non-taxable contribution and claims enforcement of the lien will expire in August 2020. (Item 2) Currently, the aggregate of Applicant's federal tax liability is \$52,063, inclusive of cumulative penalties and interest. (Items 5-7)

Applicant recently engaged a tax consultant to address his incurred 2012 tax lien. (Items 2 and 7) To date, he has reported no success with his IRS negotiations and has provided no documentation of his ongoing efforts to address and resolve the tax lien issue. Because of his failure to provide any supporting documentation of his resolution efforts with the IRS, little debt resolution credit can be extended to Applicant. So, while he remains committed to addressing the documented tax lien, he has provided no updates on his IRS negotiations, or evidence of financial counseling or budgeting.

E-QIP omissions

Asked to complete an e-QIP in June 2017, Applicant omitted the federal tax lien entered against him in 2012 in the space provided in section 26 of the e-QIP. (Item 3) He attributed his omission to his misunderstanding the question in the face of his ongoing dispute with the IRS over his church's entitlement to 501(c)(3) status. Previously, he omitted any information about tax delinquencies in the e-QIP he completed in August 2007 for a public trust position. (Item 4) Applicant provided no explanations for why he omitted this tax information in both e-QIPs.

What communications Applicant exchanged with the IRS between 2003 and 2012 is unclear. For he provided no details of any disputes he initiated with the IRS over his church donation in 2003, or why he elected to omit his \$3,000 federal tax debt in the e-QIP he completed in 2007. Whether he was ever interviewed by an OPM agent following his submission of his 2007 e-QIP is also unclear. Without more information from Applicant as to why he omitted (a) the \$3,000 tax debt he incurred with the IRS in his 2007 e-QIP (with explanations or comments if disputed) and (b) the ensuing tax lien entered against him in 2012 in his 2017 e-QIP (with explanations or comments if disputed), drawn inferences of candor lapses cannot be averted.

When questioned about any tax liens and delinquencies by an investigator from the Office of Personnel Management (OPM) in October 2018, Applicant voluntarily acknowledged the 2012 tax lien without any prior confronting. In his interview, he provided detailed information about the origins of the tax imposition in 2003 and ensuing tax lien entered against him in 2012 with added penalties and interest. (Item 7) His OPM

disclosures, while voluntary and by all evidentiary accounts made in good-faith, did not include any explanations for why he omitted the tax information in both of his prior e-QIPs.

Afforded an opportunity to explain any ongoing tax dispute with the IRS over his unresolved federal tax lie in the answers to interrogatories he submitted in July 2019, Applicant acknowledged anew the delinquent \$52,063 tax lien and confirmed the lien remained unaddressed and unsatisfied. (Item 5) Claiming that IRS lien enforcement will expire in August 2020 (Item 2), he offered no other tangible basis for disputing the lien or omitting it from his 2017 e-QIP.

Policies

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a ‘right’ to a security clearance.” As Commander in Chief, “the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. Eligibility for access to classified information may only be granted “upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual’s reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context

of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(a) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Financial Considerations

The Concern: 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 or 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 acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

Personal Conduct

The Concern: Conduct involving questionable judgment, lack of conduct, 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 ¶ 15.

Burdens of Proof

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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

about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See *also* Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Security concerns are raised over Applicant’s incurred federal tax lien covering delinquent federal taxes exceeding \$52,000. Additional security concerns are raised over his omission of his 2012 federal tax lien in the e-QIP he completed in 2017.

Financial concerns

. Applicant’s history of financial difficulties warrant the application of three of the disqualifying conditions (DC) of the financial consideration guidelines: DC ¶¶ 19(a), “inability to satisfy debts”: 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, or failure to pay annual Federal, state, or local income tax as required.” Each of these DCs apply to Applicant’s situation.

Applicant’s admitted federal tax lien negates the need for any independent proof. See Directive 5220.6 at E3. 1.1.14; McCormick on Evidence, § 262 (6th ed. 2006) His admitted federal tax lien is fully documented and creates some judgment issues. See ISCR Case No. 03-01059 at 3 (App. Bd. Sept. 24, 2004).

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in the holder of a security clearance that entitles the person to access classified information. While the principal concern of a

security clearance holder's demonstrated difficulties is vulnerability to coercion and influence, judgment, and trust concerns are implicit in cases involving debt delinquencies.

Historically, the timing of addressing and resolving tax delinquencies are critical to an assessment of an applicant's trustworthiness, reliability, and good judgment in following rules and guidelines necessary for those seeking access to classified information or to holding a sensitive position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). Applicant's cited continuing dispute of the federal tax lien entered against him in 2012 provides no extenuating benefit. Because Applicant has failed to provide any documented evidence of the basis of his federal tax dispute with the IRS over its denial of a § 501(c)(3) tax deduction, or efforts to resolve his claimed dispute, mitigating credit cannot be extended under any of the potentially available mitigating conditions.

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a "meaningful track record" that includes evidence of actual debt reduction through the voluntary payment of tax-related debts, and implicitly where applicable the timely resolution of such debts. ISCR case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) In Applicant's case, he has failed to take any documented steps to address his federal tax lien that has remained in place since it was entered against applicant in 2012. Applicant's failure to address the tax lien precludes him from receiving favorable findings and conclusions with respect to raised security concerns over the state of his still outstanding tax lien.

Personal conduct concerns

Potentially serious and difficult to reconcile with the trust and reliability requirements for holding a security clearance are the security concerns raised by Applicant's inferred knowing and willful omission of the federal tax lien entered against him in 2012. The lien covered an IRS tax delinquency incurred in 2003, which was not tangibly addressed by Applicant before it was converted to a tax lien. Applicant's stated explanation of misunderstanding the question posed to him in section 26 of the e-QIP was never adequately explained by Applicant to avert findings of candor lapses in omitting the tax lien from his 2017 e-QIP. So much trust is imposed on those cleared to see classified information that accommodations for breaches are necessarily calibrated very narrowly. See *Snepp v. United States*, 444 U.S. 506, 511n.6 (1980) Material breaches of an applicant's disclosure responsibilities in a security clearance application are, in turn, incompatible with the high trust principles affirmed in *Snepp*.

Applicant's 2017 e-QIP omission invites application of one of the disqualifying conditions (DCs) of the personal conduct guideline. DC ¶ 16(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 ward fiduciary responsibilities," applies to Applicant's situation. Based on all of the information considered in connection with his omitted tax

lien in the space provided in section 26 of the e-QIP he completed in 2017, candor lapses are reflected in Applicant's tax lien omission.

Afforded an opportunity to correct his e-QIP omission in his scheduled 2018 OPM interview, Applicant provided a voluntary, good-faith disclosure of the federal tax lien entered against him without any prior prompting. While his disclosure of the financial details associated with the 2012 tax lien were not accompanied by any explanations of why he omitted the information in the e-QIPs he previously completed, he is credited with making his disclosures when presented with his first interview opportunity to do so. He reaffirmed the entry of the federal tax lien entered against him in the interrogatory responses he provided in June 2019. Applicant's good-faith disclosures entitle him to take advantage of an important mitigating condition (MC) of the personal conduct guideline: MC 16(a), "the individual made prompt, good faith efforts to correct the omission, concealment, or falsification before being confronted with the facts."

Based on a consideration of the evidence in this compiled administrative record, allegations of falsification are mitigated. Applicant's good-faith corrections of his tax lien omission in his 2017 e-QIP enable him to overcome initial concerns about his overall honesty and integrity.

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his finances are fully compatible with the minimum standards for holding a clearance. While Applicant is entitled to credit for his civilian contributions to the defense industry, his efforts are not enough at this time to overcome his inability to resolve a major federal tax obligation that dates to 2003. His failure to resolve this major tax debt reflects adversely on his ability to maintain his finances in a sufficiently stable manner to meet the minimum requirements for holding a security clearance.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

Formal Findings

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

Guideline F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparagraph 1.a:

Against Applicant

Guideline E (PERSONAL CONDUCT):

FOR APPLICANT

Subparagraph: 2.a:

For 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Roger C. Wesley
Administrative Judge