



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



In the matter of:)
)
) ISCR Case No. 19-03940
)
Applicant for Security Clearance)

Appearances

For Government: Daniel O’Reilly, Esq., Department Counsel
For Applicant: *pro se*
09/09/20201

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant has resolved six of the nine accounts alleged in the Statement of Seasons (SOR), including three state tax liens, totaling over \$105,000. However, Applicant’s unpaid \$169,821 in federal income tax remains a security concern. Clearance is denied.

Statement of the Case

On June 9, 2020, the DOD issued an SOR detailing security concerns under the financial considerations guideline. This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive), and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017.

DOD adjudicators were unable to find that it is clearly consistent with the national interest to continue Applicant’s security clearance and recommended that the case be submitted to a Defense Office of Hearings and Appeals (DOHA) administrative judge for a determination whether to revoke his security clearance. Applicant timely answered the SOR and requested hearing.

At the hearing, convened May 19, 2021, I appended to the record as Hearing Exhibits (HE) I and II, respectively, the Case Management Order (CMO) issued in this case on May 6, 2021, and the Government's discovery letter, dated December 22, 2020. I admitted Government's Exhibits (GE) 1 through 8, and Applicant's Exhibits (AE) A through B, without objection. After the hearing, Applicant timely submitted AE C through K. These documents are also admitted without objection. (HE III, Department Counsel's email indicating no objection to Applicant's post-hearing submission, dated June 23, 2021) The final exhibit list, which is certified as accurate and complete by both parties, is appended to the record as HE IV. DOHA received the transcript (Tr.) on May 28, 2021.

Findings of Fact

Applicant, 57, has owned one-third of a small limited liability corporation (LLC) federal contracting company since 2002. The LLC holds a facility clearance and Applicant serves as the assistant facility security manager. Initially, Applicant worked as an employee of the LLC, but since 2005, he has worked as an independent subcontractor to the LLC. He performs work as a sub-subcontractor through the LLC for larger federal contracting companies. He has worked on his current contract since 2015. (Tr. 18-29; GE 1)

Applicant has held a security clearance since 1998. He completed his most recent security clearance application in October 2018, disclosing financial problems to include: failure to pay state and federal income taxes for multiple years; a federal tax lien; and a 2018 home foreclosure. The SOR alleges that that Applicant owes \$84,749 on a charged-off mortgage loan (SOR ¶1.a.); that he lost a home to foreclosure in 2018 (SOR ¶ 1.b); that he has a \$1,015 past-due balance on a credit card (SOR ¶ 1.c); that he has three outstanding state tax liens, totaling over \$105,000 (SOR ¶¶ 1.d – 1.f); and that he owes over \$315,000 in outstanding federal incomes taxes, including a lien for \$145,920 (SOR ¶¶ 1.g – 1.i). (Tr. 18-19; GE 1)

Applicant began to experience financial problems after his marriage in September 2006. To appease his wife, Applicant testified that the couple purchased a home they could not afford. In addition, their son required education at a specialized school. When the couple first married, Applicant's wife owned a small federal contracting business. Together, the couple enjoyed a joint income over \$400,000. The couple used the same accountant to handle their separate business and their joint finances. According to Applicant, the accountant advised them about their respective estimated income tax obligations based on the income earned from their respective businesses. Applicant's wife handled making the estimated tax payments for both businesses as well as the household bills, while Applicant maintained responsibility for the mortgage on the marital home. (Tr. 31-32)

From at least 2010 to 2015, the couple filed their federal and state income tax returns using the 'married filing jointly' status. For the 2010 and 2011 tax years, the couple did not make any estimated tax payments, but did report W-2 withholdings. They satisfied their additional tax liabilities through a series of payments. In 2012 and 2013,

the couple did not make estimated payments or withhold income taxes from their pay. The couple resolved the 2013 tax liability through payments, but they did not make any payments on the 2012 liability. In 2015, the IRS issued a lien against the couple for the \$145,925 tax liability for the 2012 tax year. (SOR ¶ 1.g) For reasons that are unclear from the record, the IRS wrote off the entire balance in April 2019. (GE 5)

In 2014, the couple began making estimated tax payments. That year, the estimated tax payments exceeded their tax obligations. In 2015, despite their W-2 withholdings and estimated tax payments, the couple still owed additional federal taxes. The couple amended their 2015 income tax return twice and submitted an Offer in Compromise for the outstanding balance. In response, the IRS reduced the couple's tax liability obligation and then wrote off the remaining balance, satisfying their tax obligation for the 2015 tax year. (GE 5)

As the marriage deteriorated, Applicant's financial problems worsened. For the 2016 and the 2017 tax years, Applicant filed his federal income tax returns using the 'married filing separately' status, which allowed him to pay income taxes only on his income. Using that status also made him solely responsible for any resulting federal tax liability. For the 2016 tax year, he paid \$64,500 in estimated taxes. After reviewing the return, the IRS assessed Applicant an additional \$29,910 in federal income tax. The IRS applied an overpayment from 2018 to the 2016 tax liability, resulting a \$76,742 balance. (SOR ¶ 1.h) In April 2017, Applicant's estranged wife barred him from the marital home, requiring Applicant to secure new housing. In addition to paying his living expenses, Applicant agreed to pay his estranged wife \$7,500 each month in undifferentiated support for herself and their child. That year Applicant paid just \$24,000 in estimated taxes. This amount only covered the interest and penalties on the \$88,087 tax liability. (SOR ¶ 1.i) In addition to the federal tax issues, Applicant and his wife had state tax issues. Their state of residence filed three tax liens against them in June 2016 (SOR ¶ 1.f, \$30,603.66 for tax years 2013 and 2014), January 2018 (SOR ¶ 1.e, \$58,930.69 for the 2015 tax year), and in October 2018 (SOR ¶ 1.d, \$16,177.62 for the 2016 tax year), respectively. (Tr. 33, 78-80; GE 6-7; AE F)

Applicant's separation caused other financial problems. Under the terms of the couple's separation agreement, Applicant's estranged wife retained possession of the marital home. Applicant mistakenly believed that his wife was responsible for paying the mortgage and line of credit on the home. However, the separation order required Applicant retain responsibility for the payment of the mortgage, line of credit, or other liens placed on the marital home. Neither party paid the mortgage, resulting in a 2018 home foreclosure. (SOR ¶ 1.b) Although the foreclosure sale satisfied the balance on the primary mortgage, it did not cover the \$84,749 balance of the line of credit on the home. (SOR ¶ 1.a) Applicant settled the line of credit in July 2021 for \$9,500. Applicant also had a credit card with a past-due balance of \$1,015, but that account is now current. (Tr. 37-40; GE 8; AE F, K)

In late 2017, Applicant retained a lawyer to help him resolve his state and federal tax issues. Applicant resolved the June 2016 state tax lien (SOR ¶ 1.f, \$30,603.66) through a payment plan in April 2020. He resolved the January 2018 state tax lien (SOR

¶ 1.e, \$58,930.69) in April 2021. Although Applicant did not provide a copy of the lien release for the lien alleged in SOR ¶ 1.d (\$16, 177), a May 2021 letter from his tax attorney represented that Applicant satisfied all outstanding state tax liabilities as of April 2021. Even though the state tax liens were issued jointly, Applicant resolved the liens without help from his ex-wife. However, Applicant's 2016 and 2017 federal tax liabilities, totaling \$169,821, remain unpaid. (Tr. 34-35, 81-82; GE 4; AE B)

In a May 2021 letter, Applicant's tax attorney provided the status of Applicant's federal and state income tax obligations:

The first step in resolving a tax debt with the Internal Revenue Service (IRS) and the [state comptroller] requires the taxpayer to be in tax compliance. To be considered in "tax compliance" all tax filings need to be timely filed and there are adequate tax withholdings and/or estimated tax payments to cover the current years tax. [Applicant] is in current tax compliance and has been since 2018. [Applicant's] tax debts are for years 2017 and prior.

When a taxpayer cannot fully pay a tax debt, the IRS allows collection alternatives such as a payment plan or an offer in compromise. We have been diligently contacting the IRS to obtain a collection alternative for [Applicant] without success. [Applicant's] file remains in a queue waiting to be assigned to an IRS Revenue Officer (a local IRS employee who collects tax debts). While in this pending status, the IRS will not negotiate a collection alternative. This extraordinary delay is likely a result of reduced IRS employment levels and the pandemic. We stand ready for when [Applicant's] matter is assigned to a Revenue Officer. (AE A)

In a June 2021 update, Applicant's attorney further explained:

Unfortunately, in [Applicant's] case (like many other taxpayers), the case cannot be resolved until the matter has been assigned to a revenue officer. ([Applicant] does not have the current ability to pay the liabilities in full and his case cannot be resolved over-the-phone.) On [Applicant's] behalf, we have been diligently attempting to resolve this case and have the matter assigned to a revenue officer; however, assignment of cases to revenue officers is within the sound discretion of the Internal Revenue Service, based on factors such as need, staffing, and others. In the past few years, due to these factors, it has taken months and, sometimes, years for assignment of a case to a revenue officer. We cannot compel a revenue officer to immediately review his matter and resolve these issues - as much as we wish we could.

When [Applicant's] case is ultimately assigned to a revenue officer, we will negotiate a collection alternative (e.g., installment agreement, Offer in Compromise, or otherwise) with the Internal Revenue Service to finally

resolve these issues. We are ready, willing, and able to do that upon contact from the Internal Revenue Service. I can reiterate that [Applicant] is responsive, understands the gravity of the situation, and seeks to resolve these issues as soon as possible. I would be happy to provide an update when we receive further contact from the Internal Revenue Service. (AE C)

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 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(a), 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.

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

Failure to meet one’s 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. (AG ¶ 18). The record establishes the Government’s *prima facie* case.

During their marriage, Applicant and his wife mismanaged their federal and state income tax obligations. The couple lived beyond their means, causing them to under pay their estimated taxes and have inadequate income tax withheld from their pay. This mismanagement resulted in multiple years of federal and state tax liabilities that they could not pay, as evidenced by a federal tax lien, three state tax liens, and over \$300,000 in unpaid federal taxes. Although Applicant’s difficult marriage and its ultimate dissolution contributed to and exacerbated his financial problems, the problems were not entirely beyond his control. Applicant and his wife made poor financial choices. Because of the strain caused by his financial support obligations, Applicant could not afford to pay the mortgage on the marital home, resulting in the foreclosure of the property in 2018, and a deficiency balance on the line of credit. He also allowed a credit card to become past due.

The record supports the application of the following financial considerations disqualifying:

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(c) a history of not meeting financial obligations; and

AG ¶ 19(f) failure to file or fraudulently file annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

However, in the aftermath of his separation and divorce, Applicant acted responsibly by trying to repay his creditors. In 2017, he hired a tax attorney to help him resolve his federal and state tax issues. Since 2018, he has been in compliance with his federal and state income tax obligations, making estimated tax payments and timely filing his federal and state income tax returns. He has paid the three outstanding state tax liens. He has not incurred any additional state or federal income tax liabilities since 2018.

For reasons that are unclear from the record, the IRS wrote off over \$145,000 of Applicant’s federal tax liability, resulting in the release of the 2014 tax lien. However,

Applicant still owes over \$169,000 in federal income taxes for the 2016 and 2017 tax years. Applicant has initiated a good-faith effort to resolve this federal income tax debt. He has made a request to the IRS to negotiate an offer in compromise and is waiting for the IRS to assign his case to a revenue officer. Although he is prepared to proceed with negotiations, the IRS is under no obligation to do so or to accept a lesser amount.

The following mitigating conditions are partially applicable:

AG ¶ 20(b) the conditions that resulted in the financial problems were largely beyond the persons 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;

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

AG ¶ 20(g) the individual had made arrangement with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangement.

Based on the record, doubts remain about Applicant's suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(d). Applicant has held a security clearance without incident for over 20 years. While Applicant has demonstrated his willingness to resolve his outstanding federal tax liability, the record does not contain a sufficient history of tax compliance or repayment of his outstanding federal tax debt to fully mitigate the alleged financial considerations.

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:

Paragraph 1, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 1.a – 1.g:	For Applicant
Subparagraphs 1.h – 1.i.	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant a security clearance. Applicant's continued eligibility for access to classified information is denied.

Nichole L. Noel
Administrative Judge