



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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Applicant for Security Clearance)

ISCR Case No. 20-01109

Appearances

For Government: Nicholas T. Temple., Esq., Department Counsel
For Applicant: *Pro se*
12/01/2021

Decision

MASON, Paul J., Administrative Judge:

Applicant's one documented \$250 payment to the federal tax agency for a large amount of unpaid federal income taxes that have been delinquent for over four years has not been mitigated. His failure to file his 2013 federal tax return is clearly not mitigated by his job layoff for six months in 2013. Without documented evidence to show regular payments on the delinquent taxes and the four commercial debts, Applicant's evidence does not overcome the adverse evidence under the guideline for financial considerations. Eligibility for a security clearance is denied.

Statement of Case

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP, Item 3) on June 6, 2017. After being unable to make an affirmative finding regarding Applicant's security clearance eligibility, on July 10, 2020, the Department of Defense Counterintelligence Security Agency (DCSA), issued a Statement of Reasons (SOR) detailing security concerns under the guideline for financial considerations (Guideline F). This case is adjudicated in accordance with Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of

Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 1992), as amended (Directive); and the adjudicative guidelines (AG) dated June 8, 2017. Applicant furnished an undated answer to the SOR. The second attachment to his answer is dated March 17, 2021.

The Government sent a copy of the Government's File of Relevant Material (FORM), the Government's evidence in support of the allegations of the SOR, to Applicant on June 22, 2021. The FORM included seven items of evidence listed on page 1 of the FORM. He received the FORM on July 15, 2021. The receipt is verified by the mailing date of the June 22, 2021 SOR and July 15, 2021, appearing to the right of Applicant's signature on the delivery receipt. The FORM recommended he file a response including objections, or submit explanations or other information within 30 days of receiving the FORM. DOHA received no response by August 14, 2021. The FORM was assigned to me on October 6, 2021.

Findings of Fact

The six allegations of the SOR total \$55,142 in unpaid taxes and delinquent debt. SOR 1.a alleges that Applicant owes \$30,000 in federal taxes for tax year 2016. SOR 1.b alleges that Applicant did not file a federal tax return for 2013. He admitted SOR 1.a and claimed he was paying the Internal Revenue Service (IRS) \$250 a month. He admitted SOR 1.b. He pointed to his job lay off as the reason he did not file his federal tax return for 2013.

Applicant admitted the remaining allegations SOR 1.c through 1.f. He claimed he was making arrangements to pay the delinquent account in SOR 1.c. He claimed that his December 2020 payment satisfied the balance owed to the SOR 1.d collection agency. He explained that the delinquent \$21,103 account in SOR 1.e is for a boat repossession. He did not know about the SOR 1.f account.

Applicant is 61 years old. He served on active duty in the United States Army (USA) from 1978 to September 1982. (Item 3 at 14-15) He has been married since 1986 to his second wife, following his divorce from his first wife in 1981. He is the father of six adult children. (Item 3 at 18-27)

According to his June 2017 e-QIP, Applicant has been working as a field technician since April 2014. From January to April 2014, he was machine operator. He was unemployed from June to December 2013, due to a lay off after 28 years of employment as an information technician (IT) for an insurance company. He is seeking his first security clearance. (Item 3 at 35)

Regarding SOR 1.a, Applicant explained in his June 2017 e-QIP that he did not pay \$30,000 in federal taxes for tax year 2016. He submitted one \$250 check addressed to the U.S. Treasury, but provided no documentation of the current status of the SOR 1.a federal tax balance. His reasons for not paying the taxes are unclear. His initial vague

reference to his retirement paying the tax amount makes no sense. His subsequent statement that the IRS wanted him to file his 2013 federal tax return (SOR 1.b) before they provide him a payment plan for federal tax year 2016, is more understandable. His claim that his computer stopped working does not justify his failure to file his 2013 federal tax return through some other means. (Item 3 at 36-37)

Applicant claimed that he was making arrangements to pay the delinquent account in SOR 1.c. No additional information was provided regarding the status of the arrangements.

In support of his claim that the collection agency in SOR 1.d was paid in full, Applicant provided a \$164 debit payment that was posted on December 28, 2020. There is no documentation, i.e., cancelled checks, bank ledgers or statements describing a record of consistent payments, I am unable to accept Applicant's claim that the account was paid in full. See, Item 5 at 2.

In his answer to SOR 1.e, Applicant indicated that the delinquent account he owed the insurance company was for a boat that was repossessed. He furnished no additional documentation to describe the current status of the account.

Item 4 at page 3 verifies the account alleged in SOR 1.f. The joint-installment finance account was opened in 1986. The account payments were \$240 a month, and the account was charged off in May 2015.

Applicant claimed that he was receiving financial counseling and his mortgage lender helped him achieve more reasonable mortgage payments. He explained that his mortgage was restored to a current status after he sold off some personal property. (Item 3 at 37-39) Due to the fact that Applicant provided no documented evidence of financial counseling or a budget, it is impossible to determine what his financial management practices are and how he intends to resolve the commercial debts, the unpaid taxes, the and missing 2013 federal tax return.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines, which are flexible rules of law, apply together with common sense and the general factors of 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."

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 evidence to rebut, explain, extenuate, or mitigate facts that he admits or denies. The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Financial Considerations

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19. Conditions that could raise a security concern and may be disqualifying include:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligation; 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 financial difficulties that is confirmed by the four credit reports, and his undated answer to the SOR, which includes his admitted indebtedness to the IRS for \$30,000 in unpaid federal income taxes for tax year 2016. AG ¶¶ 19(a), 19(c), and 19(f) apply. AG ¶ 19(b) also applies to the missing 2013 federal tax return alleged in SOR 1.b. The passage of eight years without filing the tax return suggests a disqualifying unwillingness to fulfill his legal responsibility of timely filing yearly tax returns.

AG ¶ 20. Conditions that could mitigate security concerns include:

- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

(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.

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; 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's pattern of inaction towards his delinquent debts and unpaid taxes continues to raise doubt about his reliability, trustworthiness, and judgment. AG ¶ 20(a) does not apply.

After almost 30 years of employment in IT for an insurance company, Applicant's job was outsourced and he was laid off. His unemployment for six months in 2013 was clearly a circumstance beyond his control. While he realizes some mitigation because of the unanticipated loss of employment, he provided inadequate evidence to demonstrate he acted reasonably and responsibly to resolve the missing 2013 tax return, the unpaid taxes, and past-due commercial debts. In sum, AG ¶ 20(b) has minimal application to the circumstances of this case. Scant mitigation is available to him under AG ¶ 20(d) for similar reasons. AG ¶ 20(g) cannot be applied either because one payment to the IRS in more than four years is insufficient to consider this condition for mitigation. See, SOR 1.a. Applicant's claim that his payment of \$164 in December 2020 resolved the SOR 1.d debt does not have the necessary documentation to show that all payments were made leading to the ultimate satisfaction of the debt.

AG ¶ 20(c) affords Applicant some mitigation based on his efforts in working with the debt firm and the lender to restore his mortgage to a current status. Conversely, He receives no mitigation for the SOR delinquent debts and unpaid taxes as there is insufficient evidence to confidently conclude those past-due obligations are under control.

Whole-Person Concept

I have examined the evidence under the guideline for financial considerations in the context of the nine general factors of the whole-person concept 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant is 61 years old. He has been married to his second wife since 1986 and has six adult children. He served in the USA from 1978 to 1982. After working almost 30 years for one employer, his job was unexpectedly outsourced, resulting in six months of unemployment until January 2014. He exercised good judgment by negotiating lower mortgage payments so that he could keep his home. However, he did not pay his 2016 taxes amounting to \$30,000. More than eight years have passed without Applicant filing his 2013 federal tax return. He has done little or nothing to resolve the four commercial debts. Having weighed the evidence from a commonsense point of view, Applicant has not overcome the security concerns arising from the guideline for 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, Guideline G:	AGAINST APPLICANT
Subparagraphs 1.a-1.f:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the security interests of the United States to grant Applicant eligibility for access to classified information. Eligibility for a security clearance is denied.

Paul J. Mason
Administrative Judge