



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 05-09208
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Department Counsel
For Applicant: *Pro Se*

February 7, 2008

Decision

TESTAN, Joseph, Administrative Judge:

On July 27, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the security concerns under Guidelines E and F. The action was taken under 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 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on September 10, 2007, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on November 16, 2007. Applicant did not respond to the FORM. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 59 year old employee of a defense contractor.

Applicant filed a Chapter 7 bankruptcy petition in 1988. His case was "closed" in 1989 (Exhibit 6). In his SOR response, applicant stated he "incurred about a year or so of unemployment in the '80s. Prior to the period of unemployment my bills were paid on time."

Applicant admits he was indebted to the IRS for back taxes, penalties, and interest in the following amounts for the following years:

1987: \$2,351.00
1988: \$3,248.00
1994: \$5,558.00
1995: \$15,862.00
1996: \$13,030.00
1997: \$17,463.00
1998: \$6,350.00
1999: \$8,714.00
2000: \$18,940.00
2001: \$6,909.00
2002: \$1,025.00
2003: \$2,193.00

In 1989, two Federal tax liens were filed against applicant for nonpayment of his 1987 and 1988 income tax. In 1996, another lien was filed for nonpayment of his 1994 income tax. In 1998, two more liens were filed for nonpayment of his 1995 and 1996 income taxes. In 1999, another lien was filed for nonpayment of his 1997 income tax.

Applicant admits he was indebted to the State of Oklahoma (OTC) for back taxes, penalties and interest (1) in the total amount of \$9,950.00 for tax years 1994, 1995, 1996, and 1997; (2) in the amount of \$997.00 for tax year 1998; (3) in the amount of \$2,024.00 for tax year 1999; (4) in the total amount of \$3,983.00 for tax years 2000 and 2001; and (5) in the amount of \$5,492.00 for tax year 2003.

In his SOR response, applicant addressed his tax debts. With respect to the IRS debts, he stated that his 1987, 1988, 1994, and 1995 tax debts have "been cancelled by the Internal Revenue Service" and he is "unable to make any payments" for these tax years. With respect to tax years 1996 through 2001, he stated "arrangements are being made to settle" these debts. With respect to tax years 2002 and 2003, he stated these debts were paid in 2007. With respect to his OTC income tax debts, he stated "arrangements are being made to settle" all of them.

Applicant attached a letter from an Oklahoma accountant who, according to the accountant, "has in the past and is currently working with [applicant] in regards in [sic] the process of satisfying various legal tax obligations stated in [the SOR]." In the letter,

the accountant stated applicant's IRS tax debts for years 1987, 1988, 1994, and 1995 are "no longer contested by the IRS and [are] considered to have been satisfied within their system," and his 2002 and 2003 tax debts have been paid. The accountant further stated that when they complete and file applicant's 2004, 2005, and 2006 income tax returns, applicant will be entitled to approximately \$40,000.00 in refunds, which will be applied to his remaining tax debts. The accountant did not address the Oklahoma tax debts. No documentation was provided to corroborate any of the accountant's statements.

In a signed, sworn statement he gave to an OPM investigator in March 2006, applicant stated the following:

I am indebted to the IRS and OTC in previous tax years because I disagreed with the amount owed. Because I didn't agree with the amount due for these previous tax years, I withheld payment.

Applicant was indebted to a health care provider in the amount of \$1,398.00. The debt was sent to a collection agency. In his response to the SOR, applicant stated he thought the debt was taken care of because the medical services provided were for a work-related injury covered by workers compensation law. He further stated that he contacted his attorney and asked him to get the bill settled. Unlike his tax debts, this debt appears to be the result of a mistake. Accordingly, I find it has no current security significance.

Applicant falsified material facts on a Security Clearance Application (SCA) he executed in April 2004 when, (1) in response to Question 36, he denied having any tax liens filed against his property during the previous seven years, (2) in response to Question 38, he denied he had been over 180 days delinquent on any debt during the previous seven years, and (3) in response to Question 39, he denied he was then over 90 days delinquent on any debt. In his response to the SOR, applicant stated, in essence, that his false answers were mistakes.

Policies

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information." (*Department of the Navy v. Egan*, 484 U.S. 518,527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." (Exec. Ord. 10865, Section 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel

security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, Paragraph E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, Paragraph 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 security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).) “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, Paragraph E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, Section 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern relating to Financial Considerations is set forth in Paragraph 18 of the new AG, and is as follows:

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 and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The AG note several conditions that could raise security concerns. Under Paragraph a., an “inability or unwillingness to satisfy debts” is potentially disqualifying. Under Paragraph c., “a history of not meeting financial obligations” may raise security concerns. The evidence shows applicant has a long history of not paying his State and Federal income tax obligations. Accordingly, these disqualifying conditions are applicable.

The guidelines also set out mitigating conditions. Paragraph a. may apply where “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." Applicant's failure to pay his income tax when due was recent, frequent, and intentional. This mitigation condition is not applicable.

Under Paragraph b., it may be mitigating where "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, or a death, divorce or separation), and the individual acted responsibly under the circumstances." Although the financial problems that caused applicant to file for bankruptcy in the 1980s were, according to applicant, caused by a lengthy period of unemployment, he failed to provide credible evidence that his unemployment was beyond his control, or that he acted responsibly under the circumstances. With respect to his income tax debts, the evidence establishes that applicant intentionally let them go delinquent and then ignored them. This mitigating condition does not apply.

Evidence that "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control" is potentially mitigating under Paragraph c. Applicant has presented evidence that he retained an accountant to help him resolve his income tax delinquencies, and that the accountant has taken some action toward that goal. However, given applicant's history, this evidence falls short of establishing the problem is being resolved or is under control. This mitigation condition does not apply.

Paragraph d. applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." In his SOR response, applicant stated (1) the IRS cancelled his 1987, 1988, 1994 and 1995 tax debts, and (2) he paid his delinquent 2002 and 2003 IRS debts. Applicant's failure to provide any documentation from the IRS corroborating these statements make them suspect, particularly in light of his concealment of his tax liens and debts and when he completed the SCA. However, even if he were given credit for the elimination of these debts, he has not provided evidence of a good-faith effort to resolve his remaining tax debts. His vague statement that "arrangements are being made" to settle his remaining IRS debts (totaling approximately \$72,000), and his State income tax debts (totaling approximately \$22,000.00), is hardly sufficient to conclude a good-faith effort is underway. This mitigating condition does not apply.

It may be mitigating under Paragraph e. if "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue." Since applicant provided no reason for his disagreement with the IRS and OTC over the amount of taxes owed, there is no way to conclude his position was reasonable. This mitigating condition does not apply.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set forth in Paragraph 15 of the AG, and is as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Paragraph 16 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph a., the "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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities," may be disqualifying. This disqualifying condition is applicable because applicant intentionally provided false, material information in response to three questions on the SCA he completed in April 2004.

Paragraph 17 sets forth conditions that could mitigate security concerns. I considered each of them and conclude none apply.

"Whole Person" Analysis

Under the whole person concept, the AJ must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An AJ should consider the nine adjudicative process factors listed at AG Paragraph 2(a): "(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) 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 Paragraph 2c, the ultimate determination of whether to grant a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature man who has a history of ignoring his income tax obligations. In 2004, he concealed this derogatory information from the Government when he was asked about it on an SCA. His conduct was intentional, serious, frequent, and recent. In view of these facts, I conclude applicant failed to mitigate the security concerns arising from Guidelines E and F.

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 F:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.r:	Against Applicant
Subparagraph 1.s:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant

Conclusion

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

JOSEPH TESTAN
Administrative Judge