



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



In the matter of:)	
)	
)	ISCR Case No. 12-04731
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

09/15/2014

Decision

WHITE, David M., Administrative Judge:

Applicant accumulated more than \$25,700 in delinquent Federal tax and consumer debts during the past ten years of his current employment. He demonstrated neither means nor efforts to resolve them. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF 86) on December 17, 2011.¹ On March 20, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).² The action was taken

¹Item 5.

²Item 1.

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 adjudicative guidelines that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR (Answer) on April 23, 2014, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on May 28, 2014. A complete copy of the File of Relevant Material (FORM)⁴ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on June 27, 2014. He submitted additional material in refutation, extenuation, or mitigation within the 30-day period thereafter, but made no objection to consideration of any contents of the FORM and did not request additional time to respond. I received the case assignment on August 25, 2014.

Findings of Fact

Applicant is 52 years old, and has worked as a manager for a defense contractor since 2004. He has been divorced for nine years. His two daughters, ages 23 and 14, live with his former spouse. He has no military service, and this is his first application for a security clearance from DoD. He has held a security clearance in the past, but did not recall the details.⁵

In his response to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a through 1.i, and 1.k through 1.m. He denied the allegations in SOR ¶¶ 1.j, and 1.n through 1.p, with the explanation that he could not verify whether those debts were his despite their appearance on his credit report.⁶ Applicant's admissions, including his responses to DoD CAF Interrogatories,⁷ are incorporated into the following findings of fact.

Applicant made a series of apparently conflicting statements with respect to the allegation in SOR ¶ 1.a, that he did not timely file his Federal income tax returns for the years 2007 through 2010. In his December 2011 SF 86, he said, "Have filed all taxes.

³Item 4.

⁴The Government submitted eight Items in support of the SOR allegations.

⁵Item 5; Item 6 at 20.

⁶Item 4.

⁷Item 6.

Have tax balance.” He then reported not having paid required taxes in 2008, 2009, and 2010, due to insufficient funds.⁸ During his February 2012 interview with an investigator from the Office of Personnel Management (OPM) Applicant said that he failed to timely file his Federal income tax returns for the years 2007 through 2010, and had paid his 2007 taxes but still owed about \$13,400 for the other three years.⁹ In November 2013 he answered, “Yes,” in response to the DoD CAF Tax Interrogatory question asking whether he had filed his Federal tax returns for tax years 2008 through 2012, but did not provide the requested Internal Revenue Service (IRS) account transcripts for those years.¹⁰ In his Answer he admitted SOR ¶ 1.a, but added, “. . . it is true that I did not file the necessary paperwork on time. All necessary paperwork has been filed and the debt referred to is being paid by agreed terms to resolve this matter.”¹¹ In his FORM response letter he said, “To address the date on which the tax returns for the years 2008 and 2009 were submitted to the IRS, this took place on April 14, 2010. For the tax year of 2010, the return was submitted to the IRS before the deadline date of April 15, 2011.” No copies of any returns were provided to corroborate or clarify any of these statements.

Applicant consistently admitted that he owed the IRS approximately \$13,400 in unpaid taxes for the years 2008, 2009, and 2010. He said on his SF 86 that he failed to pay these taxes due to insufficient funds, but had a payment plan in place.¹² During his OPM interview, he said that he had made payment arrangements with the IRS, on a date he could not recall, under which he was paying \$200 per month.¹³ In his Answer he said, “the debt referred to is being paid by agreed terms to resolve this matter.”¹⁴ In his response to the FORM, wherein Department Counsel pointed out that he had provided no documentation concerning an IRS repayment agreement or of payments thereunder, Applicant forwarded a copy of a June 19, 2014 letter from the IRS confirming establishment of an installment agreement based on his proposal during a conversation on June 10, 2014. This agreement covers an unspecified account balance for his 2008 and 2009 delinquent taxes, for which penalties and interest continue to accrue. It calls for him to pay \$100 per month beginning July 18, 2014; with payments increasing to \$125 per month in July 2015 and to \$200 per month in July 2016. He provided no documentation concerning any repayment agreement for his 2010 delinquent taxes, which he estimated to be \$5,200 as of December 2011; and no evidence of actual payments toward any of his delinquent taxes.

⁸Item 5 at 27-28.

⁹He affirmed that these statements were accurate on November 25, 2013. Item 6 at 16-18.

¹⁰Item 6 at 15.

¹¹Item 4 at 1.

¹²Item 5 at 27-28.

¹³Item 6 at 18.

¹⁴Item 4 at 1.

The remaining twelve delinquent debts alleged in the SOR range from \$63 to \$6,221 and total \$12,367. All are supported by record evidence, and became delinquent between 2005 and 2012. Applicant's statement that he "cannot honestly verify if [four of] these debts are owed without the creditor providing proof that I am responsible for payment,"¹⁵ is insufficient to overcome this *prima facie* evidence of their existence. Despite reporting a monthly \$450 remainder of income over expenses on his November 2013 Personal Financial Statement, he provided no evidence of having made any payments toward resolution of these delinquent debts and claimed that insufficient funds prevented him from doing so.¹⁶

Applicant submitted no evidence of financial counseling or other efforts to establish financial responsibility. He provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references describing his judgment, trustworthiness, integrity, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), 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, 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. According to AG ¶¶ 2(a) and 2(c), 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 that "[a]ny doubt concerning personnel being considered for access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

¹⁵*Id.*

¹⁶Items 4 through 8.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he 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.” Section 7 of Executive Order 10865 provides: “[a]ny 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.”

A person applying for access to classified information seeks to enter 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 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 information.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant failed to pay about \$13,400 in Federal income tax debt to the IRS for the years 2008 through 2010, which continues to accrue penalties and interest. Twelve other consumer debts alleged in the SOR, totaling \$12,367, became delinquent between 2005 and 2012 and remain unpaid. This evidence raises security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

I also considered whether the record evidence supports security concerns under AG ¶ 19(g), for “failure to file annual Federal, state, or local income tax returns as required.” Applicant’s statements concerning his tax filings were inconsistent, and may reflect confusion between describing submission of the tax returns versus payment of the resulting tax debts. There is no other evidence from which to determine the dates on which the returns in question were completed, but all of his statements indicate that they had been filed with the IRS before he submitted his present security clearance application. One or more of the returns was admittedly filed late, but I do not find that conduct to be serious enough in this case to raise independent security concerns under AG ¶ 19(g).

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant’s financial difficulties:

(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) 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;

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

(e) 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.

Applicant offered insufficient evidence to support mitigation under any of these provisions. The weight to be accorded his June 2014 repayment agreement with the IRS, concerning his delinquent 2008 and 2009 Federal taxes, is significantly reduced by the absence of any evidence of payments thereunder; and by his having claimed on his SF 86, during his OPM interview, and in his Answer that he had previously been making such payments. No other evidence of either intention or means to pursue debt resolution was provided.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 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) 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 commonsense 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 pertinent facts and circumstances surrounding this case. Applicant is an accountable adult, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. His financial irresponsibility is ongoing toward more than \$25,000 in delinquent debt, which continues to grow while he fails to address it. This debt did not arise under circumstances that were shown to be beyond his control, yet remained unresolved and grew during the past ten years of his current employment. He offered no evidence of financial counseling, rehabilitation, better judgment, or responsible conduct in other areas of his life. The potential for pressure, coercion, and duress remains undiminished.

In the absence of any demonstrated means or effort to resolve his delinquent debts, or to otherwise mitigate the resulting security concerns, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his financial considerations.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a	For Applicant
Subparagraphs 1.b through 1.p:	Against 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.

DAVID M. WHITE
Administrative Judge