



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 12-09573
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

06/05/2014

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the security concerns arising from his failure to timely file and pay his taxes over the course of several years. He currently owes the IRS over \$20,000 for unpaid taxes and only recently started to address his significant tax debt. Notwithstanding his years of dedicated service as a defense contractor, Applicant's financial irresponsibility raises significant doubts about his continued eligibility. Clearance is denied.

Statement of the Case

On February 25, 2014, the Department of Defense (DOD), in accordance with DOD Directive 5220.6, as amended (Directive), issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline F (Financial Considerations). Applicant timely answered the SOR and requested a hearing to establish his eligibility for access to classified information (Answer).

On April 8, 2014, I was assigned Applicant's case. After coordinating with the parties, I scheduled the hearing for May 14, 2014. The hearing was held as scheduled. Department Counsel offered exhibits (Gx.) 1 – 6, which were admitted into evidence

without objection. Applicant testified and offered exhibits (Ax.) A – I, which were admitted without objection. The hearing transcript (Tr.) was received on May 27, 2014, and the record closed on May 28, 2014.¹

Findings of Fact

Applicant, 49, has been working as a defense contractor and has held a security clearance since about 1982. He served in the U.S. military reserves from 1989 to 2002. He and his wife married in 2001, and separated in 2006 or 2007. He has two children. (Tr. at 10-11, 34-35, 38, 53-54; Gx. 1; Gx. 4 at 4)

Applicant admits that he failed to timely file his federal and state tax returns for tax years 2007 through 2012. He further admits that he owes the IRS over \$20,000 for tax years 2008 and 2009. He started taking steps to resolve his tax situation after the IRS sent him letters regarding his failure to file and his past-due tax debt. He has now filed all his required federal tax returns and negotiated a repayment plan with the IRS. As of the hearing, Applicant had yet to make his first plan payment. Applicant's failure to timely file his federal tax returns and federal tax debt are alleged at SOR ¶¶ 1.a – 1.c. (Tr. at 54-57; Answer; Gx. 4 at 3-4; Gx. 5, *federal tax account transcripts*; Ax. C, Ax. E)²

Applicant also admits that he currently owes about \$2,000 in overdue state taxes. He claims to be in the process of negotiating a repayment plan with the state. He also admits to not timely paying his property taxes from 2008. The debt is alleged at SOR ¶ 1.d, and was recently satisfied through involuntary wage garnishment. (Tr. at 57, 60-65; Answer; Ax. F – I)

Applicant claims his financial trouble started when he and his wife separated. She had primarily handled the family's finances, including filing their joint tax returns. Also, around this time, Applicant became a salaried employee, which left him ineligible for overtime pay and caused his income to decrease. He disclosed his delinquent debts on his security clearance application, and readily acknowledges his responsibility for his tax situation. (Tr. at 34-38, 57; Gx. 1, Gx. 4 at 3)

In April 2012, Applicant discussed his financial problems during his security clearance interview. He admitted that he was "living paycheck to paycheck." (Gx. 4 at 4) At hearing, Applicant testified that his salary has increased and his finances are now stable. He submitted proof of resolving other debts that are not tax related. (Tr. at 38, 46-51, 58-59; Gx. 5) His personal financial statement from October 2013 reflects that, after paying his monthly expenses, he had over \$2,000 a month in disposable income. At hearing, Applicant acknowledged that his monthly disposable income remains the same. He has not received financial or debt counseling. (Tr. at 50-51, 59)

¹ Applicant was given until May 28, 2014 to submit post-hearing matters, but he elected not to submit anything. A corrected transcript was received on June 4, 2014.

² See also, Tr. at 39-42, 44-45, 52-53.

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant’s eligibility, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a common sense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an 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.” Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to establish their eligibility.

In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.³

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. 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 an 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.⁴

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant did not meet the strict guidelines established for determining eligibility for access to classified information.

³ See also, ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (“Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.”)

⁴ See ISCR Case No. 11-13626 (App. Bd. Nov. 7, 2013) (security clearance determinations require administrative judges to make predictive judgments).

Analysis

Guideline F, Financial Considerations

The security concern relating to financial problems is explained at AG ¶ 18:

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.

As noted above, the "concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts."⁵ The concern also encompasses financial irresponsibility, which may indicate that an applicant would also be irresponsible, unconcerned, negligent, or careless in handling and safeguarding classified information.

Applicant's history of failing to timely file and pay his taxes raises the Guideline F concern, and establishes the following disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

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

AG ¶ 19(g): failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

The guideline also lists a number of conditions that could mitigate the concern. The following mitigating conditions were potentially raised by the evidence:

AG ¶ 20(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;

AG ¶ 20(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;

⁵ ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012). See also ISCR Case No. 10-00925 at 2 (App. Bd. June 26, 2012).

AG ¶ 20(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; and

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant disregarded the obligation to file his tax returns and pay his taxes for several years. His wife handled their finances throughout their marriage and the separation left him unable to deal with his financial responsibilities. However, Applicant's financial irresponsibility went on for years following the separation and he did not begin to address his tax situation until after the taxing authorities initiated enforcement action. He currently owes the IRS over \$20,000 for tax years 2008 and 2009. Additionally, despite steady employment and significant disposable income, Applicant's 2008 property tax debt was only resolved after his wages were garnished and his delinquent state income tax debt remains unresolved.⁶ Applicant's failure to timely, responsibly, and voluntarily address his tax situation leaves the mitigating conditions at AG ¶¶ 20(b) and 20(d) unavailable.

Applicant recently started to put his financial house in order, including satisfying numerous non-tax-related debt and agreeing to a repayment plan with the IRS. However, as of the hearing, he had not made a payment towards resolving his sizeable federal tax debt.⁷ Moreover, in light of Applicant's long track record of financial irresponsibility, it is too soon to safely conclude that his financial situation is under control and that he will not return to his old ways once the spotlight of the current security clearance review has passed. AG ¶¶ 20(a) and 20(c) do not apply. Consequently, although Applicant has recently made some headway in resolving his tax situation and has addressed other debts, it is too soon to resolve the financial considerations concern in his favor.⁸

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the

⁶ ISCR Case No. 12-01038 at 3 (App. Bd. June 26, 2013) (non-alleged debts can be looked at in addressing an applicant's mitigation case).

⁷ ISCR Case No. 07-09304 at 4 (App. Bd. Oct 6, 2008) ("In the absence of payments under the plan, it cannot be said that there are 'clear indications that the problem is being resolved or is under control,' as required for application of [AG ¶ 20(c)]"); ISCR Case No. 11-13507 (App. Bd. Oct. 29, 2013) ("unpaid delinquent debts constitute a continuing course of conduct, thereby undermining a conclusion that the debts are not recent within the meaning of the Directive").

⁸ ISCR Case No. 11-07447 (App. Bd. Apr. 11, 2013) (sustaining unfavorable clearance decision, where individual had a history of failing to timely file and pay his taxes and had unresolved tax debt).

nine factors listed at AG ¶ 2(a).⁹ I have considered all the favorable and extenuating circumstances in this case. I specifically took into account Applicant's over 30 years of service as a military member and defense contractor, and that throughout that time he has held a security clearance without issue. However, this and other favorable record evidence does not mitigate the significant security concerns raised by his financial situation, notably, his failure to timely file and pay his taxes. An individual with a history of failing to meet the obligation of all citizens to file and pay his taxes may similarly fail to discharge his security obligations. Applicant's favorable evidence did not mitigate this concern.¹⁰ Overall, the record evidence leaves me with doubts about Applicant's continued eligibility for access to classified information.

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a – 1.d: **Against Applicant**

Conclusion

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is denied.

Francisco Mendez
Administrative Judge

⁹ The non-exhaustive list of adjudicative factors are: (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.

¹⁰ ISCR Case No. 11-02087 at 3 (App. Bd. Mar. 20, 2012) ("Even years of safeguarding national security information may not be sufficient to mitigate a history of ongoing, significant delinquent debt").