



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



In the matter of:)
)
) ISCR Case No. 12-09656
)
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

11/13/2013

Decision

MASON, Paul J., Administrative Judge:

Rather than taking some responsible role in managing the family finances, Applicant ceded complete authority of the job to his wife. Without informing Applicant, his wife signed an agreement in November 2007, to have a debt consolidation company consolidate and pay their debts, and file their federal tax returns. Some credit card debts were not paid and tax returns for 2008, 2009, and 2010 were not filed. Eighteen additional months passed before Applicant took documented action in June 2013, to resolve his delinquent federal taxes and past due mortgage. However, Applicant has paid about 80% of his delinquent federal taxes and is bringing his mortgage to a current status. Eligibility for access to classified information is granted.

Statement of the Case

On or about June 12, 2013, the Department of Defense (DOD) issued the Statement of Reasons (SOR) detailing security concerns under financial considerations

(Guideline F).¹ 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 adjudicative guidelines (AG).

Applicant furnished his notarized answer to the SOR on July 15, 2013. A copy of the Government's File of Relevant Material (FORM), the Government's evidence in support of the allegations of the SOR, was sent to Applicant on August 27, 2013. In an attachment to the FORM, Applicant was advised he could object to the information in the FORM or submit additional information in explanation, mitigation, or extenuation. He received the FORM on September 5, 2013. His response was received between September 30, 2013, and October 4, 2013, the date the Government indicated no objection to Applicant's response. The case was assigned to me on October 16, 2013.

Findings of Fact

The SOR contains three allegations under the financial considerations guideline. ¶ 1.a identifies a mortgage that is over 120 days past due. Applicant admitted his mortgage was past due, but provided documentation indicating he had been approved for a loan modification agreement on July 11, 2013. He explained that he has a 15-year refinance loan that is scheduled to be paid off in 2018.

¶ 1.b alleges that Applicant did not file his 2008, 2009, and 2010 tax returns in a timely manner. He admitted he did not file the returns, but blamed the omission on a debt consolidation company who did not file the tax returns or pay other debts as promised. Applicant indicated he filed tax returns for the missing years, and also filed his 2011 and 2012 tax returns on time. He was ultimately able to establish a documented payment plan with the Internal Revenue Service (IRS) that was scheduled to begin on July 8, 2013. No supporting documentation was presented to support his claim that the federal returns were filed.

¶ 1.c alleges that Applicant owes the IRS approximately \$20,681. He admitted that he owed the taxes although he claimed the deficient balance was less than \$13,020, after subtracting a refund for tax year 2008 of \$1,661, and owing only \$3,639 in 2009 and \$2,138 in 2010. On June 13, 2013, he provided proof of a \$5,000 payment to the IRS in reduction of the deficiency balance. As noted under ¶ 1.b, the IRS notified him of an installment agreement on June 26, 2013, requiring him to pay \$300 a month beginning on July 8, 2013, the same day Applicant provided documentary proof of a second payment of \$1000 on the balance owed the IRS.

Applicant is 53 years old. He married his second wife in June 1992, and has two children. He was hired by a defense contractor as a senior logistics analyst in January

¹ The SOR is undated. However, the cover letter that was mailed with the SOR, explaining the significance of the SOR and how it must be answered, is dated June 12, 2013.

2008. He currently is employed as a technical analyst by a different defense contractor. He has held previous positions similar to his current job. He served in the U.S. Navy from October 1978 until he retired with an honorable discharge in November 2002. He served on an inactive status in the Navy Reserve from November 2002 until October 2008. He has held a security clearance since October 1978. In the 1980s, Applicant received an associate's degree in general studies based on an assessment of his military training in lieu of academic credits. He has also been taking online courses at a university since 2007.

Applicant explained that his wife always handled the financial responsibilities. In November 2007, for unknown reasons, she was having trouble paying the bills each month. She attended an employer-sponsored seminar presented by a debt management company. The company promised to consolidate and pay the family's debts at a lower interest rate. The company also promised to file the family's federal tax returns. Unbeknownst to Applicant, his wife accepted the company's promises and signed an agreement to pay the company \$1,544 a month beginning in December 2007. Although Applicant's wife learned in early 2011, that the debt company was not making payments to the creditors each month, and had not filed the federal tax returns, she did not tell Applicant about the financial and tax problems until November or December 2011, when he was being processed for a continuation of his security clearance.

On February 27, 2013, Applicant provided responses to questions about the status of his past-due mortgage identified in ¶ 1.a, and other delinquent debts. He claimed that he made arrangements to bring the past-due mortgage payments and other delinquent debts to a current status, but provided no evidence in support of his claims.

On September 30, 2013, Applicant responded to the FORM with a position statement and additional documentary steps taken to extinguish his mortgage arrearage and resolve his tax problems. Though he did not present documentation establishing that he filed the missing tax returns identified in ¶ 1.b, he did provide computations of a refund due for 2008, and the amount of taxes owed for 2009 and 2010. He also presented proof of making additional payments of \$1,500 in August 2013, and \$1,500 in September 2013, to the IRS. (¶ 1.c) His purpose for accelerating the payments was to have the remaining deficiency balance of \$3,782 paid by November 2013. Documentation provided by Applicant indicates that on August 12, 2013, he applied for an increase in the amount of federal withholding allowance to be taken from his bi-weekly earnings to increase the amount of money available to pay taxes at the end of the year. He provided his leave and earning statement for August 16, 2013, that shows federal withholding was \$384. His leave and earning statement for August 30, 2013, reflects federal withholding increased to \$459. Regarding Applicant's mortgage, documentation reflects that he made four mortgage payments totaling \$2,304 in July and August 2013, to bring his mortgage closer to a current status.

The credit reports and Applicant's March 2012 OPM interview indicate, in addition to the past-due mortgage, he was delinquent on four credit card accounts

between 2009 and late 2011, that are not listed in the SOR. Applicant explained in his March 2013 interview when each unlisted account was opened and why the accounts became delinquent. Applicant stated that each account was paid off between April 2009 and October 2011. His explanation is corroborated by the credit reports for February and April 2013.

Applicant accepted full responsibility for his financial problems and he has learned from his mistakes. He indicated that all his debt is resolved or in a current status, however, his mortgage documentation indicates payments made, but does not show the mortgage completely restored to a current status.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions that are useful in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on sound and prudent judgment. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole-person concept" that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. 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 the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.I.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.15., the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant bears the ultimate burden of persuasion in demonstrating that he warrants a favorable security clearance decision.

Analysis

Financial Considerations

The security concern for financial considerations is set forth in 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

There are three pertinent disqualifying conditions that are potentially applicable: 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*). In June 2012, credit reports reflected that Applicant was over 120 days past due on his mortgage in an amount over \$16,000. He did file his tax returns for 2008, 2009, and 2010, and owed the IRS over \$20,680 in federal taxes for those years. AG ¶¶ 19(a), 19(c), and 19(g) apply.

Four mitigating conditions are potentially applicable: 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 reliability, trustworthiness, and good judgment*); AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*); 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) (*a good-faith effort to repay overdue creditors or otherwise resolve debts*).

AG ¶ 20(a) is inapplicable. Even after he discovered the mortgage and tax problems in November or December 2011, he took no documented action to address them until at least June 2013. The first prong of AG ¶ 20(b) does not apply. Applicant's financial problems occurred because of circumstances within his control. An applicant has a duty to contribute at some level to the management or monitoring of his financial obligations. In addition, he is required by law to file his tax returns and pay his taxes. His reliance on his wife to ensure family debts were paid, tax returns were filed, and taxes were paid, does not relieve him of his financial responsibilities and is not extenuating.

Concerning the second prong of AG ¶ 20(b), Applicant paid \$9,000 of the delinquent federal tax balance. He owes less than \$4,000 and plans to pay the remainder by November 2013. In July and August 2013, he made four mortgage payments totaling about \$2,304 to bring his mortgage closer to a current status. The second prong of AG ¶ 20(b) applies in part. Though there is no evidence of financial counseling, Applicant's overall repayment efforts also receive some credit under AG ¶¶ 20(c) and 20(d) because he has successfully demonstrated his financial troubles are being resolved in a good-faith manner.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions of the financial considerations guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors listed in 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 the participation was 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.

As set forth in AG ¶ 2(c), the final security clearance decision must be an overall commonsense judgment based upon careful consideration of the specific guidelines, each of which is to be evaluated in the context of the whole person.

Applicant is 53 years old. He has been married since July 1990. He has two children. He received his first security clearance when he entered the U.S. Navy in October 1978. He retired from the Navy in November 2002 with a honorable discharge. He continued his service to the Navy on an inactive status until October 2008. He has been employed as a technical specialist since January 2008.

In November 2007, Applicant's wife was managing the family finances. For some unexplained reason, she was having problems paying bills. She entered an agreement to pay \$1,544 a month to a debt company to pay her debts and file her tax returns. Applicant should have applied more attention to his wife's financial practices but did not. He did not find out about the unlisted credit card, federal tax, and mortgage problems until November or December 2011.

Applicant compounded his poor judgment by taking no action to file the tax returns until at least March 2012. He did not act to repay the delinquent federal taxes until June 2013. However, his repayment efforts to pay both his delinquent taxes and past-due mortgage between July and September 2013, persuades me to conclude he finally understands the importance of handling his finances in a responsible manner. Considering the disqualifying and mitigating evidence in the context of the factors of the whole-person concept, Applicant has mitigated the security concerns arising under the financial considerations guideline. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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):

FOR APPLICANT

Subparagraph 1.a-1.c: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Paul J. Mason
Administrative Judge