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



In the matter of:)	
)	
)	ISCR Case No. 12-11723
)	
Applicant for Security Clearance)	

Appearances

For Government: Christopher Morin, Esq., Department Counsel
For Applicant: *Pro se*

11/26/2013

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to timely file income tax returns for several years and acquired a substantial debt to the Internal Revenue Service (IRS). His lack of diligence and responsibility toward his legal obligations raise doubts about his judgment and his willingness to comply with the law. His favorable evidence is insufficient to mitigate the financial considerations security concerns. Clearance denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 28, 2013. The Department of Defense (DOD) sent him a Statement of Reasons (SOR) (undated) alleging security concerns under Guideline F (financial considerations).¹ Applicant answered the SOR on June 11, 2013, and requested a hearing before an administrative judge. The case was assigned to me on July 10, 2013. The Defense Office of Hearings

¹ The DOD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

and Appeals (DOHA) issued the notice of hearing on July 16, 2013, scheduling a hearing for July 25, 2013.

At the hearing, the Government offered one exhibit (GE 1). Applicant testified, presented the testimony of one witness, and submitted four exhibits. (AE 1 - 4) All exhibits were admitted without objection. I left the record open until August 19, 2013, to allow Applicant time to supplement the record. He promised to submit one additional document, but he failed to do so. DOHA received the hearing transcript (Tr.) on August 6, 2013.

Procedural Issues

The first notice of hearing was issued on July 10, 2013, scheduling a hearing for July 24, 2013. The second notice of hearing was issued on July 16, 2013, scheduling a hearing for July 25, 2013. Applicant was consulted and agreed to both hearing dates. At his hearing, Applicant stated he had sufficient time to prepare and was ready to proceed. He affirmatively waived his 15-day advanced notice of the hearing.

At the end of the hearing, Department Counsel moved to amend the SOR to conform to the evidence. Applicant did not object. I granted the amendment in accordance with Directive E3.1.17. SOR ¶ 1.a. was amended to read: "You failed to timely file federal and state personal income tax returns for tax years 2007, 2008, 2010, and 2011. A second paragraph was added: "SOR ¶ 1.b: You owe over \$16,000 to the IRS for back-due taxes for tax years 2010, 2011, and 2012."

Findings of Fact

Applicant denied the factual allegations in the original SOR. He admitted the two amended SOR allegations. After a thorough review of all the evidence, including his testimony and demeanor while testifying, I make the following findings of fact:

Applicant is a 43-year-old electronics technician employed by a defense contractor. After graduating from high school in June 1988, Applicant enlisted in the U.S. Navy where he served on active duty from December 1988 to March 1995. He was discharged from the service pursuant to an administrative board for having a pattern of misconduct. His service was characterized as "under other than honorable conditions."

Applicant married his wife in 1992, and they separated in 2003. They have three children, ages 20, 15, and 12. He entered into a separation agreement with a monthly obligation to pay \$700 in spousal support, and \$1,000 in child support. He is current on his support obligations.

Applicant was hired by his current employer, a government contractor, in March 1996. Applicant's supervisor testified on his behalf. He has known Applicant for the last 15 years. During the first nine years they worked together, but he became Applicant's supervisor six years ago. He considers Applicant to be an outstanding worker with good

character. In his opinion, Applicant is dependable, reliable, and a man of integrity. Applicant was up-front with his supervisor and disclosed to him his financial problems. Applicant possessed a top secret security clearance from August 2002 to July 2009. He failed to submit SCAs for the renewal of his clearance in 2009 and 2011, and his security clearance was not continued in 2009.

Applicant disclosed in his January 2013 SCA (Section 26 – Financial Record) that he did not timely file his federal and state income tax return for tax year 2008, and that he had not filed his federal and state income tax returns for tax years 2011 and 2012.

Applicant testified that although he separated from his wife in 2003, they filed joint federal and state income tax returns from tax year 2003 to 2009. His wife is medically disabled and works part-time. She receives tax documents from her state that need to be attached to their federal and state income tax returns. Applicant explained that he requested the tax documents from his estranged wife, but she failed to provide them to him. In 2009, he hired a tax preparer to assist him file his 2007, 2008, and 2009 income tax returns. Because he was filing jointly, and he had sufficient money withheld from his earnings, he did not accrue a tax debt or was assessed any penalties.

In 2010 and 2011, Applicant again asked his estranged wife for her tax documents. Instead of providing him with the documents, she filed on her own as a single tax filer. Applicant was forced to file his federal and state income tax returns as a single filer for tax years 2010, 2011, and 2012. Applicant filed his federal and state income tax returns for tax years 2010, 2011, and 2012 in April 2013. (AE 1 – 3) Because he had taken dependent exemptions during those years, not enough money was withheld from his earnings to pay his assessed taxes. Applicant owes the IRS over \$16,000 in past-due taxes for tax years 2010, 2011, and 2012.

In June 2013, Applicant paid \$995, and retained a tax services company to help him resolve his federal tax debt. He also contacted his estranged wife, and they are considering refiling their 2010, 2011, and 2012 income tax returns as joint filers. He believes that if they are allowed to refile jointly, he will be able to reduce his tax debt. If they cannot refile, he will negotiate a payment plan with the IRS. Applicant promised to pay his delinquent tax debt. However, he has not established a payment agreement, and has made no payments.

Applicant acknowledged responsibility for filing his income tax returns late. He admitted being a procrastinator and waiting until the last minute to collect and organize his documents to file his income tax returns. He was unconcerned about filing late because he never owed any money previously. He was told by his tax preparer that as long as he did not owe any money, it was not that important to file late.

Applicant repeatedly noted that he had little control over his wife, and he had no access to her documents. He believed he had no other choice but to wait until she provided him with her tax documents to file their income tax returns. He acknowledged

that he should have been more responsible and diligent in filing his income tax returns. Applicant credibly testified that he was not trying to avoid paying his taxes.

Concerning his current financial situation, Applicant stated that he lives from paycheck to paycheck. He has little money left over at the end of the month after paying his support obligations and his day-to-day living expenses. Depending on his work hours, he may either have \$500 left over at the end of the month, or he could have no money left. He needs his security clearance to retain his job, to be able to support his family, and to pay his debts. He noted that he possessed a top secret security clearance for many years without incident.

Policies

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has

or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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. (AG ¶ 18)

Applicant failed to timely file his federal and state income tax returns for tax years 2007, 2008, 2010, and 2011. He owes the IRS over \$16,000 for back-due taxes for tax years 2010 through 2012. Financial considerations 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 and state, or local income tax returns as required or the fraudulent filing of the same," apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Financial considerations mitigating condition AG ¶ 20(a) does not apply. Applicant's financial problems are ongoing, he failed to timely file his income tax returns for four different years, and he owes a large debt.

AG ¶ 20(b) does not apply. Although Applicant did not have control over his estranged wife and could not obtain her tax documents, he still had the ability and the legal obligation to timely file his income tax returns. He could have filed as a married person filing separate, or as a single filer. Applicant procrastinated and did not file his 2010 and 2011 income tax returns until 2013. He should have been more diligent concerning his legal obligation to timely file his income tax returns. He failed to act responsibly under the circumstances.

Applicant claimed he was under the mistaken belief that filing his income tax returns late was not that important as long as he did not owe any money. Considering his time in the service, his age, and his years working for a government contractor while possessing a security clearance, Applicant should have known better.

AG ¶ 20(c) partially applies. Applicant showed some responsibility when he hired the assistance of a tax preparer to file his delinquent income tax returns, and when he retained a tax services company to help him resolve his tax debt. He also received credit for being upfront about his financial problems with his supervisor, in his SCA, and at his hearing. He is in the early stages of receiving counseling, and his problems are not yet resolved or under control.

AG ¶ 20(d) does not apply. Applicant has made no payments towards his IRS debt, and has not established a payment agreement. His actions so far are a good start and steps in the right direction, but they cannot be considered good-faith efforts to repay or resolve his debt.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c).

Applicant has worked for a defense contractor since 1996. He possessed a top secret security clearance from August 2002 to July 2009, without incident. He is considered to be an outstanding worker with good character. In his supervisor's opinion, Applicant is dependable, reliable, and a man of integrity. Applicant disclosed his financial problems to his supervisor and in his 2013 SCA, and he was candid and forthcoming at his hearing.

Applicant showed some responsibility when he retained the services of a tax preparer to file his delinquent income tax returns, and a tax services company to help him resolve his current tax debt. There is no record evidence to show that he had prior financial problems. He is current in his spousal and child support obligations.

Notwithstanding, Applicant's failure to timely file his income tax returns was not due to circumstances beyond his control. He procrastinated and was irresponsible complying with his legal obligations. Additionally, he does not have a payment agreement, and has made no payments towards his debt. Applicant's lack of judgment and unwillingness to comply with the law raise questions about his reliability, trustworthiness, and ability to protect classified information. Applicant's favorable evidence is insufficient to mitigate the financial considerations security concerns.

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
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Subparagraphs 1.a & 1.b:	Against Applicant
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Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance denied.

JUAN J. RIVERA
Administrative Judge