



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 13-00729
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)
Applicant for Security Clearance)

Appearances

For Government: Caroline Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

02/21/2014

Decision

HOWE, Philip S., Administrative Judge:

On December 4, 2012, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On July 18, 2013, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). 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) effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on July 25, 2013. He answered the SOR in writing on September 2, 2013, and requested a hearing before an administrative judge. Defense Office of Hearings and Appeals (DOHA) received the request on September 12, 2013. Department Counsel was prepared to proceed on October 21, 2013, and I received the case assignment on October 24, 2013. DOHA issued a Notice of Hearing on November 27, 2013, and I convened the hearing as scheduled on

December 23, 2013. The Government offered Exhibits 1 through 5, which were received without objection. Applicant testified and submitted Exhibits A through E, without objection. DOHA received the transcript of the hearing (Tr.) on January 3, 2014.

Pursuant to the SOR amendment, discussed below, I allowed Applicant until January 24, 2014, to submit additional documents addressing the amended language in the SOR. On that date Applicant requested additional time to submit his 2011 and 2012 income tax documents. I gave him until noon on February 12, 2014, to submit those documents. He again was unable to complete his filing by that date, so I gave him until 5 p.m. Eastern Standard Time on February 14, 2014, to submit his documents. He did so. The Government had no objection to the documents. I marked copies of his emailed requests and income tax forms as Exhibits F to Exhibit O.

The record closed February 14, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Department Counsel moved at the hearing to amend the SOR by changing ¶ 2.d, alleging Applicant failed to file his state and Federal income forms for 2008 to 2012 (instead of 2010 and 2011 as originally alleged) and failed to pay his taxes for the same years as required by law. (Tr. at 69, 70) I granted the motion to amend after Applicant stated he had no objection to the amendment (Tr. 71).

Findings of Fact

In his Answer to the SOR Applicant admitted the factual allegations in ¶¶ 1.a, 1.c, and 1.d of the SOR, as originally alleged, with explanations. He denied the factual allegations in ¶ 1.b of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 49 years old, married but previously divorced from his first wife. He has two children and is the stepfather of another child. (Tr. 26-29; Exhibit 1)

Applicant worked as a federal contractor for a number of years. During those times he had a security clearance. He is now a program manager for a federal contractor. Applicant earns about \$151,000 annually. His wife started a new job in November 2013 after being laid off from her previous job in September 2012. She now earns \$49 an hour for a total of about \$101,000 annually. Her previous position paid \$120,000. (Tr. 22-29, 50-52; Exhibits 1 and 4)

Applicant's wife suffered from post-partum depression after the birth of their child in 1999, according to his testimony. The death of her minor goddaughter in 2005 also depressed her. Between 2009 and 2011 his wife suffered from severe depression. No

copies of any medical records documenting these conditions were submitted. (Tr. 19, 20; Exhibit 1; Answer)

Applicant allowed his wife to manage the household finances. During that time she did not pay the house mortgage for about 11 months. He restarted payments in November 2013. (Tr. 20, 21; Exhibits 1-3)

Applicant did not pay a credit card debt of \$15,000 listed in ¶1.a of the SOR. He started making payments in November 2013 of \$284 monthly. He intends to continue making those payments until the debt is paid. Applicant did not submit any documents showing the installment payment agreement. The debt is being resolved. (Tr. 27-31; Exhibits 1-3)

Applicant owed another credit card debt for \$5,370 that was reduced to a judgment and finally collected through garnishment action (SOR ¶ 1.b). Applicant put his wife in charge of paying the household debts and she failed to do so. This debt was not paid regularly and Applicant received a telephone call from the creditor or collector that finally put him on notice that the debt was due. Garnishment then occurred. The debt is paid. (Tr. 30-32; Exhibits 1-4; Answer attachment)

Applicant and his wife filed a Chapter 13 bankruptcy petition on April 2, 2012 (SOR ¶ 1.c). Applicant dismissed the petition on April 18, 2012. There are 50 creditors listed in the bankruptcy petition. No total amount of debt is shown in the documents presented by the Department Counsel. (Exhibit 5)

Applicant did not file his state and Federal income taxes for 2008-2011 on time as required by law. The original SOR alleges non-filing for the years 2010 and 2011. The amended SOR added the years 2008, 2009, and 2012, none of which Applicant filed or paid on time as required by law. (Tr. 33-43, 57-60, 65, 66-68; Exhibits 1-4, F to O; Answer attachment)

Applicant did not disclose his failure to file his returns, and the subsequent tax debt, for the 2008 and 2009 income tax years to the Government in the interview with the investigator January to March 2013. On his e-QIP in Question 26 Applicant disclosed only that his 2010 income taxes were late in being filed, but were resolved at present. He did not disclose any other years of delinquency. Nor did he disclose that his state tax forms were not filed or that he owed money for his taxes. (Tr. 33-43, 57-60, 65, 66-68; Exhibits 1-4, F to O; Answer attachment)

Applicant testified he filed the tax returns for 2008 to 2010 in 2012. He recalls he owes about \$2,000 on his 2008 Federal income tax but has not paid it. He thinks he owes \$75 on his state income for the same period. His accountant is reviewing the numbers. Applicant testified he may owe up to \$5,000 for his 2009 federal income taxes. The 2010 and 2011 tax returns were filed in April 2013 but he has not paid any tax due beyond what money was withheld by his employer. Applicant's September 3, 2013 Answer states the 2010 tax forms were filed and the 2011 tax forms were to be

filed in August 2013. (Tr. 33-43, 57-60, 65, 66-68; Exhibits 1-4, F to O; Answer attachment)

Applicant's 2010 federal income tax form shows an adjusted gross income of \$271,968. His income in 2011 was \$409,514 and in 2012 it was \$300,869. His additional income taxes owed for 2010 as shown on his Answer attachment is \$11,974. He owes \$47,215 more tax for 2011. His additional tax owed for 2012 is \$27,211. Adding the tax debts from 2009 through 2012 it totals about \$55,563.66. (Tr. 33-43, 57-60, 65, 66-68; Exhibits 1-4, F to O; Answer attachment) He submitted the tax transcripts from the IRS showing his 2009 and 2010 federal income taxes were filed. He owes \$6,005.69 for 2009 and \$18,057.97 for 2010. Applicant wants to file an offer and compromise with the Internal Revenue Service (IRS) to settle all of his tax debts because he says he cannot pay the total tax owed for all the years of \$110,463.66. Applicant testified he lives from paycheck to paycheck and has no savings. (Tr. 41-44; Exhibits L to O)

Applicant filed his state income tax form for 2010 in November 2013. Applicant does not know how much money he owes to his home state on that tax debt. He has now filed his 2011 state income tax forms. He does not know how much money he owes on that tax return. He has now filed his 2012 state income tax forms. Applicant started to work with his accountant on the past due tax forms and debts in November 2013.

Applicant used money from his Section 401(k) retirement account to pay the arrearages in his delinquent mortgage to avoid foreclosure. He consulted with Green Path financial counseling service to learn how to better manage his money starting in the summer of 2013. He did not have a copy of the agreement he signed with that company. Green Path has not "interacted" with any creditor to resolve any debt. Applicant paid them \$150. He retained the Lexington Law Firm the week before the hearing to review his credit score and to help improve it. (Tr. 20, 47, 48, 61-63; Exhibits 1 and E; Answer)

Applicant submitted four character letters from his work colleagues. They have known him for four to twelve years. They consider Applicant trustworthy and professional. These co-workers are aware of Applicant's financial problems and still consider him worthy of a security clearance. (Exhibits A to D)

Applicant's personal financial statement (PFS) shows a net monthly income of \$11,326 from him and his wife. Their monthly expenses are \$7,646. They pay four debts, including their mortgage, student loan, auto loan (30 days late), and the ¶ 1.a debt of \$15,000 with \$2,515 of their income, leaving \$1,165 for other expenses. They have savings of \$1,200. Their other assets are their two autos and the house they own. Their PFS does not show they are paying any other debts or their delinquent taxes. (Exhibit E)

His wife has two credit cards that are late being paid. One debt is for \$20,000 and the other card debt is charged off by the creditor. He has three delinquent medical debts owed for the past 12 to 16 months, for a debt of \$2,100. (Tr. 44-46)

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 and mitigating conditions, which are useful 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 the adjudicative process (AG ¶ 2(a)). The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny 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 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

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 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.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the

applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out 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.

The guideline at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Three conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant accumulated \$20,370 in delinquent consumer debt from 2004 to the present time that remains unpaid. Applicant has two delinquent debts listed in the SOR, failed to file state and federal income tax forms for 2008 to 2012 as required by law, has not paid his income taxes as also required, and has one terminated bankruptcy petition.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Two conditions may be applicable:

- (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.

Applicant is paying his \$15,000 credit union debt on a monthly basis of \$284 for the past two months. His lack of documentation about the payments is troubling, but it seems likely he is paying this debt on the installment basis. AG ¶ 20 (d) has partial application to this debt.

Applicant's debt to a credit card issuer was not paid voluntarily. The money was garnished after the creditor obtained a judgment. The debt is resolved, but Applicant did not make a good-faith effort to pay it himself. No mitigating condition applies.

Applicant claims he filed his 2008 to 2011 income tax returns. He does not know, or cannot state accurately, how much tax money he owes to his home state and the U.S. government. Reviewing his various exhibits shows the debt is about \$55,563.66 to the IRS alone. His 2009 to 2012 income taxes for both governments are still not paid. Applicant wants to make an offer and compromise to the federal government for his taxes. The status of his state taxes remains unclear. It is clear he has not paid at least four years of federal and state taxes. His joint annual income exceeds \$250,000 but he only has \$1,200 in savings. Applicant spends money excessively and does not pay his income taxes, except the amount his employer withholds. No mitigating condition applies.

Applicant's attempts at financial counseling are late and have not produced any affirmative results. The tax and financial problems exhibited by the 50 creditors listed in his terminated bankruptcy filing are not under control. AG ¶ 20 (c) does not apply.

Filing a bankruptcy petition and later dismissing it is within the discretion of Applicant. However, his actions do show he has a large number of creditors and he did not demonstrate any plan to resolve all his debts, especially his state and federal income tax debts.

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 an applicant’s conduct and all the 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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 the facts and circumstances surrounding this case. Applicant is a professional and his wife is also. They earn a very high salary compared to many people in the United States. Yet they have not filed or paid their personal incomes for four years. Applicant also testified he lives from paycheck to paycheck on his high income. He did not explain where his money goes. However, it is clear he does not pay his income tax beyond what his employer withholds pursuant to law.

His explanation of that failure and lack of precision about the amount owed is not credible or persuasive. Applicant clearly spends money excessively. He blames his wife for not paying the bills. She is depressed, he testified, but working at a good job now. Applicant did not submit any medical documents to verify his assertions about his wife’s mental and emotional conditions.

I do not find Applicant to be a responsible person regarding his financial obligations, especially meeting his tax requirements. Yet he wants a security clearance to have access to government information developed with other people’s tax money.

Overall, the record evidence leaves me with questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not 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
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	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.

PHILIP S. HOWE
Administrative Judge