



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



In the matter of:)	
)	
)	ISCR Case No. 13-01396
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

06/24/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On February 7, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a review based on the written record in lieu of a hearing. The case was assigned to me on May 21, 2015. Department Counsel submitted a File of Relevant Material (FORM), dated July 31, 2014¹. Applicant received the FORM on April 22, 2015. Applicant timely submitted a response to the FORM. Based on a review of the case file, eligibility for access to classified information is granted.

¹The Government submitted nine items for the record.

Findings of Fact

In his answer to the SOR, Applicant admitted the SOR allegations under Guideline F and provided explanations.

Applicant is 46 years old. He graduated from high school in 1986. Applicant is married and has one son. He has been employed with his current employer since 2006. He has held a security clearance since August 2003. (Item 5)

The SOR alleges one delinquent debt, and a past-due mortgage loan payment totaling about \$2,873. (Item 5) It also alleges failure to file federal and state income tax returns for tax years 2010 through 2012. It also alleges an indebtedness to the IRS for past-due taxes for tax year 2009 in the amount of at least \$2,200. (Item 1)

Applicant stated that he was paying his bills and was current with all debts until 2010. In 2010, his wife left her employment and did not find employment for several months. When she became employed her income was significantly lower. This resulted in financial hardship for the family. (Item 4)

In addition, Applicant explained that between 2010 and 2012 he had multiple financial setbacks due to a car accident, which involved medical and legal debts. He also noted his wife's issues with alcohol which impacted his life financially. He enrolled in a debt-management program in 2012.² He believes he is gaining financial stability. (Item 4)

Applicant submitted a personal financial statement that shows a total net monthly income of \$5,251. After expenses and a debt payment to a consolidation company of \$797, he has a monthly net remainder of \$400. (Item 6)

In his answer to the SOR, Applicant stated that his tax information is at the accountant and ready to be picked up. He elaborated that lack of funding has prevented paying the accountant. He has been working to settle the tax and working with an accountant since June 2013. (SOR 1.a-1b)

As to 1.c, Applicant stated that the taxes from 2011 and 2012 will result in a credit that eliminate the debt to the IRS for 2009. He provided documentation to support his claim. (Response to FORM)

As to 1.d, Applicant has not had adequate funding to pay the account (\$199). He will resolve as soon as possible. In his answer to the FORM, he admits that he still owes this debt, but is trying to contact the collection company.

²Applicant has two credit collection accounts in the payment program. The credit report lists "pays as agreed."

Applicant states that he is current with his mortgage loan account (1.e). He claims that he has been current since April 2014. He claims that he refinanced his home and his mortgage payments were reduced by \$400 a month. (Item 6) He provided documentation in response to FORM to support his claims.

When Applicant responded to the FORM, he stated that all Federal tax returns have been completed and filed for 2010 through 2012. In 2010 he claims he owed \$5,462, but in 2011 he received a refund of \$3,354. He noted a refund of \$5,229 from tax year 2012. He provided copies of tax returns and payments made to IRS. He noted refunds for 2011 (\$856) and 2012 (\$789). Applicant stated that the federal taxes owed for 2009 were paid in full with the refund from 2011. He provided supporting documentation.

Applicant disclosed his failure to file tax returns and pay taxes on his 2013 security clearance application. He stated that he is in the process of settling the tax issues. During his 2013 interview he mentioned a payment arrangement with the IRS to pay \$200 a month for his 2009 tax liability. In his answer to the SOR, Applicant noted that the tax information was complete and ready to be resolved. He provided the necessary documentation with his response to the FORM.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven

by Department Counsel. . . .³ The burden of proof is something less than a preponderance of evidence.⁴ The ultimate burden of persuasion is on the applicant.⁵

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.”⁶ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁸ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

³ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁷ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁸ *Id.*

Applicant admitted that he had delinquent debts and taxes. He also failed to timely file his 2010 and 2011 federal and state tax returns. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), FC DC AG ¶ 19(c) (a history of not meeting financial obligations), FC DC AG ¶ 19(g) (failure to file taxes as required or the fraudulent filing of same) also apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." Applicant has resolved the tax issues and attributed his delinquent debts and late filing of taxes to his wife's leaving her employment without another position, a car accident, and legal bills. He provided some nexus with regard to the failure to file his tax returns since 2010 until 2015. Consequently, Financial Considerations Mitigating Condition (FC MC) 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) applies.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) applies. Applicant cited to his lack of funds, and his debt-consolidation plan in 2012. He worked to refinance his mortgage and has been current since 2014. He sought help with his tax returns in 2013. He provided evidence to show that he has acted responsibly under the circumstances.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has some application. In 2012, he entered into a consolidation plan for two accounts. FC MC 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) applies.

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.

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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is a 46- year- old employee, holding a security clearance. Applicant did not timely file his federal tax returns for the tax years 2010 and 2011. He stated that this was due to his loss of his wife's income. He owed taxes for 2009. He admits that his financial problems have continued for a number of years. He provided evidence that he has resolved the tax issues and the late mortgage payment. He admits he still owes for the phone account. He has promised and intends to pay his delinquent debt. He went to an accountant to help him resolve the issues. He provided sufficient information concerning the payment plan with the account that he stated that he is repaying. Applicant refuted and mitigated the Government's case concerning the financial considerations security concerns. His credit reports reflect all accounts "paying as agreed."

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
Subparagraphs 1.a-1.e:	For Applicant

Conclusion

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

NOREEN A. LYNCH.
Administrative Judge