



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-02936
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: Michael W. Jacobs, Esq.

February 4, 2016

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on November 4, 2013. (Government Exhibit 1.) On February 10, 2015, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning Applicant. 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 answered the SOR in writing on March 9, 2015 (Answer), and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 7, 2015. This case was assigned to me on May 11, 2015. The Defense Office of Hearings and Appeals (DOHA) issued notices of hearing on May 20, and June 17, 2015. I convened the hearing as scheduled on June 18, 2015. The Government offered Government Exhibits 1 through 5, which were admitted without objection.

Applicant testified on his own behalf. Applicant's counsel presented Applicant Exhibit A for identification, an IRS installment agreement for tax years 2008, 2010, 2011, 2012, and 2013. Applicant Exhibit A was not moved into evidence by Applicant. Rather, Applicant asked that the record remain open for the receipt of Applicant Exhibit A, as well as additional documents. The record remained open until July 2, 2015. (Transcript (Tr.) 25 - 26, 65, 72.) No additional documents were received from Applicant within that time. DOHA received the transcript of the hearing on June 26, 2015.

Subsequently, pursuant to Directive "Additional Procedural Guidance" ¶ E3.1.1.0, the record was reopened on January 4, 2016, for receipt of exhibits from Applicant. Applicant Exhibit A for identification was again not submitted. Rather, Applicant submitted Applicant Exhibits B, C, and D, which will be further described below. They are admitted. The record closed on January 22, 2016. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 57, and married. He is employed by a defense contractor, and seeks to retain a security clearance in connection with his employment.

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant denied both allegations in the SOR (1.a and 1.b) under this Paragraph. He also submitted additional information to support his request for a security clearance.

The SOR lists two delinquent tax debts, totaling approximately \$12,288. They are for the 2011 and 2012 tax years. The existence and amount of these debts is supported by statements of the Applicant in his e-QIP. (Government Exhibit 1 at Section 26.)

According to Applicant, he has had tax difficulties for several years, beginning in 2008. He states that this was due to unintentional mistakes on his part in not having sufficient withholding taken from his pay. According to Applicant, as of October 20, 2014, he owed \$9,069 for tax year 2008; \$1,801 for tax year 2010; \$8,659 for tax year 2011; \$3,328 for tax year 2012; and \$1,473 for tax year 2013. The total tax due at that point in time was \$24,330.¹ (Tr. 20-36, 40-41, 45, 51.)

¹The SOR did not allege security concerns regarding Applicant's failure to pay taxes on a timely basis for tax years 2008, 2009, 2010, and 2013. Hence, these facts will not be considered in an analysis of applicable disqualifying conditions. Applicant's entire tax history is relevant in deciding any possible mitigation, and when considering his conduct under the whole-person concept.

Applicant also stated that he has had a payment agreement with the IRS for many years. This agreement states that he pays \$300 a month towards all of his delinquent taxes. (Tr. 32-33, 52-56.)

As stated, Applicant submitted three documents in support of his statement that he has a payment arrangement with the IRS concerning the tax years at issue in the SOR, and that he has been successfully paying it. The documents submitted do not support those statements.

Applicant Exhibit B is the first page only of an “Annual Installment Agreement Statement” from the IRS dated October 2, 2014. The complete statement would have shown his payments to the IRS for the period July 8, 2013, to July 7, 2014, and how they were applied. Without the rest of the statement it is impossible to say what he has paid during that payment year, which ended a year before the hearing. In addition, as stated, this exhibit is incomplete.

Applicant Exhibit C consists of pages 1 and 3 of a 4 page document. It is an IRS installment payment form dated August 20, 2014. It does show that Applicant’s agreed payment is \$300. However, the summary states that there was no last payment received. It also showed that his balance had risen from \$20,699.20 to \$24,746.28 due to additional penalties and interest. There is no information on this exhibit as to what Applicant owed for each individual tax year. In addition, as stated, this exhibit is incomplete.

Finally, Applicant Exhibit D consists of pages 1 and 3 of a 3 page document. This IRS document dated March 2, 2015, concerns a payment Applicant is supposed to make on his back 2009 taxes, evidently to finally pay off a deficiency on those taxes. The original deficiency appears to be \$3,006. This exhibit does not discuss the two tax years of concern in the SOR. In addition, as stated, this exhibit is incomplete.²

1.a. Applicant denied in his Answer owing \$8,434 to the IRS for tax year 2011. As stated, he testified that the figure was \$8,659 as of October 2014. Applicant submitted no information concerning how much he owed the IRS, or his ability to make consistent payments on his alleged payment agreement as of the time of the hearing, despite being given three opportunities to do so.³ This debt is not resolved.

1.b. Applicant denied in his Answer owing \$3,854 to the IRS for tax year 2012. As stated, he testified that the figure was \$3,328 as of October 2014. Applicant submitted no information concerning how much he owed the IRS, or his ability to make

²Applicant testified that he had no problems with his 2009 taxes. (Tr. 27, 52.) That statement appears to be incorrect according to Applicant Exhibit D.

³The first time was the hearing itself. The second time was when the record was left open to July 2, 2015. The third opportunity was when the record was reopened from January 4, through January 22, 2016.

consistent payments on his alleged payment agreement as of the time of the hearing, despite being given three opportunities to do so.⁴ This debt is not resolved.

Policies

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate 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 AG ¶ 2 describing the adjudicative process. The administrative judge's over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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, "The 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. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a

⁴The first time was the hearing itself. The second time was when the record was left open to July 2, 2015. The third opportunity was when the record was reopened from January 4, through January 22, 2016.

certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination 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

Paragraph 1 (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 notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant has a considerable amount of tax debt that he has either been unable or unwilling to pay for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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) states that the disqualifying conditions may be mitigated where “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.” Also, AG ¶ 20(d) states it can be mitigating where, “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” None of these mitigating conditions were established by Applicant’s case.

Applicant has had tax difficulties since tax year 2008, and every year after that. The evidence supports the existence of over \$12,000 in tax debts regarding tax years 2011 and 2012. (SOR 1.a and 1.b.) None of the documentary evidence submitted by

Applicant discusses those two tax years at all. No evidence was submitted showing that Applicant has been making regular payments to the IRS towards his debts for the years in issue.

It is Applicant's burden to submit evidence sufficient to mitigate the security concerns arising from his failure to pay his taxes in a timely fashion, and the resulting tax debt. He has not met it. In conclusion, looking at Applicant's entire financial situation at the present time, the evidence does not support a finding that "there are clear indications that the problem is being resolved or is under control," as is required by AG ¶ 20(c). Paragraph 1 is found against Applicant.

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 the applicant's conduct and all the relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guideline F, above, applies here as well. Applicant has had tax problems for several years, which have not been resolved. He has a history of not paying his taxes in a timely fashion, and there is little evidence to show that he is now trustworthy and reliable. Applicant's conduct with regard to his finances was not mitigated.

Under AG ¶ 2(a)(3), his conduct is recent and continuing. I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I also cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); or that there is little to no likelihood of continuation or recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial

situation. Accordingly, the evidence supports denying his request for a security clearance.

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
Subparagraphs 1.a and 1.b:	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.

WILFORD H. ROSS
Administrative Judge