



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



In the matter of:)
)
) ISCR Case No. 14-00706
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

11/12/2014

Decision

WHITE, David M., Administrative Judge:

Applicant failed to timely file Federal and state income tax returns for tax years 2010 through 2012, and did not demonstrate good cause for doing so or resolution of all resulting debts. Security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on June 14, 2013.¹ On April 14, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under

¹Item 5.

Guideline F (Financial Considerations).² 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 that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR on May 20, 2014, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on July 23, 2014. A complete copy of the File of Relevant Material (FORM)⁴ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on August 8, 2014. He submitted a "Rebuttal" statement within the 30-day period thereafter but submitted no additional documentation, made no objection to consideration of any contents of the FORM, and did not request additional time to respond. I received the case assignment on October 9, 2014.

Findings of Fact

Applicant is 62 years old, and has worked for his present employer, a defense contractor, since June 2010. He is married with no children. He earned an associate's degree in 1982. He has prior military service in the Air Force, and honorably retired from the Air Force Reserve in July 2007. The Air Force most recently granted him a security clearance in 2005.⁵

In his response to the SOR, Applicant admitted that he failed to file state and Federal income tax returns as alleged in SOR ¶¶ 1.a and 1.b, but denied that he had not paid those taxes.⁶ Applicant's admissions are incorporated into the following findings of fact.

²Item 1.

³Item 4.

⁴The Government submitted eight Items in support of the SOR allegations. Item 6 is a copy of the Subject Interview from the Office of Personnel Management Report of Investigation for which Department Counsel offered no authenticating evidence, and which Applicant did not adopt. Directive ¶ E3.1.20 requires that this document be authenticated in order to be received and considered. Since it was neither authenticated nor adopted by Applicant, Item 6 is excluded from evidence in this case and will not be considered.

⁵Item 5.

⁶Item 4.

Applicant said on his June 14, 2013 security clearance application that he had failed to file required Federal and two different state income tax returns for 2010, 2011, and 2012. He further said that he did not know how much he owed but planned to complete all tax filing by the end of that month.⁷ He provided documentation concerning his actions to resolve his tax obligations for some of those years with his answer to the SOR, as described below.

Applicant's 2010 Federal income tax return was received by the Internal Revenue Service (IRS) on December 9, 2013. He owed \$11,819 in tax for that year. He had \$8,345 withheld toward that obligation during the tax year, and made a payment of \$749 with his timely request for an extension of time to file until October 15, 2011. He submitted another payment of \$1,925 when he filed the return in December 2013. That payment was insufficient to cover all resulting late fees and interest, so he made another payment of \$943 to fully pay his 2010 Federal income tax obligations that the IRS received and processed on March 3, 2014.⁸

On April 15, 2012, Applicant requested an extension of time to October 15, 2012, to file his 2011 Federal income tax return. He submitted a \$100 payment with the request. After he did not file the return on time, the IRS prepared a substitute return for him on September 23, 2013. The IRS issued him a final statutory notice of deficiency on December 3, 2013, and he filed a return for 2011 on January 27, 2014. The IRS has not yet processed his 2011 return, nor did he document any additional payments toward that year's tax liability. The amount of that debt remains unresolved, but based on Applicant's substantial under-withholding of Federal income taxes in 2010 and 2012, must be considered to be substantial in the absence of evidence to the contrary. In his Rebuttal, he said that he had received his 2011 tax bill, but did not say how much he still owes. He also said that he submitted an Installment Agreement Request to the IRS and was awaiting a response, but did not provide any documentation to support these statements.⁹

Applicant neither filed his 2012 Federal income tax return on time, nor requested an extension of time to file. The IRS issued him a inquiry concerning his failure to file on December 4, 2013, then a notice of late-filing penalty on December 23, 2013. He submitted the return on January 27, 2014. His adjusted gross income was \$138,085 and he owed \$19,630 in taxes on his \$110,280 of taxable income. He was credited the \$11,361 that had been withheld for him, and owed the additional \$8,269 plus penalties and interest for late filing and payment. As of May 26, 2014, the IRS reported his 2012 tax account balance plus accruals totaled \$11,159.¹⁰

⁷Item 5 at 31-33.

⁸Item 4 at 9-10, 23-28.

⁹Item 4 at 1, 21-22; Rebuttal.

¹⁰Item 4 at 1, 16-20.

Applicant submitted an IRS account transcript concerning his 2013 Federal income taxes, dated May 14, 2014, that indicated “RETURN NOT PRESENT FOR THIS ACCOUNT,” but also recorded receipt on April 18, 2014, of a \$22,240 “Payment with return.”¹¹ He also submitted copies of personal checks he wrote to the IRS for \$11,036 and \$11,204 (totaling \$22,240). These checks were dated April 15, 2014, and annotated that they were tendered toward his 2012 and 2013 Federal income taxes, respectively. These funds were drawn on a checking account he opened on April 9, 2014, using the proceeds of a \$40,000 unsecured bank loan toward which he made his first \$928 monthly payment in May 2014. By May 5, 2014, he had spent all but \$816 of these loan funds. He said, without providing documentation, that his 2013 Federal income tax obligations were fully paid by the \$11,204 check; and that the IRS had corrected its erroneous application of both checks toward that account and applied the \$11,036 payment toward his 2012 taxes to resolve that debt.¹²

Applicant also failed to file his state income tax returns for 2010, 2011, and 2012, in two different states where he was required to do so because he lived in one state and worked in the other. He provided documentation showing that he made some payments toward his delinquent taxes in the state where he worked in April 2014, paid his 2013 taxes there on time, and had no balance due toward any of those tax years as of May 13, 2014. He also provided a bank statement reflecting a 2013 tax refund from the state where he lived, which corroborates his claim to have filed and resolved his tax obligations in that state for the preceding years.¹³

Applicant attributes his failure to file and pay taxes as required during the three years alleged in the SOR to medical, separation, and marriage issues that caused fatigue, confusion, a lack of motivation, and failure to perform at his normal capacity. He said that he stopped taking one medication that he thought caused some of these problems. He also had trouble consolidating tax documents and finding a trustworthy tax preparer to assist him until very recently.¹⁴

The record does not address whether Applicant obtained financial counseling or established a workable budget that includes sufficient income tax withholding, from which his ability to avoid future tax problems could be predicted with any confidence. It also lacks evidence concerning the quality of his professional performance, the level of responsibility his duties entail, and his track record with respect to handling sensitive information and observation of security procedures. No character witnesses provided statements describing his judgment, trustworthiness, integrity, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

¹¹Item 4 at 15.

¹²Item 4 at 1, 11-13, 15; Item 7 at 3; Rebuttal.

¹³Item 4 at 1, 4, 7, 29.

¹⁴Item 4 at 2; Rebuttal.

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 (DCs) and mitigating conditions (MCs), which are to be used 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he 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." Section 7 of Executive Order 10865 provides: "[a]ny 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."

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

Department Counsel asserted, and the record evidence established, security concerns under three Guideline F DCs, as set forth in AG ¶ 19:

- (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 failed to comply with his obligations to timely file Federal and state income tax returns for 2010, 2011, and 2012. He had significant under-withholding of his Federal taxes during that time, and owed large amounts that he could not afford to pay without eventually taking out an unsecured loan and requesting an installment payment plan. His 2011 tax debt remains unresolved. This raises security concerns under DCs 19(a), (c), and (g), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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; and

(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.

Applicant said that some medical and marital conditions, most of which apparently continue to date, caused him to disregard his tax obligations. However, he offered no evidence from which to determine the validity of these statements or to evaluate whether they are resolved. The most likely explanation for his conduct is that he owed large Federal income tax debts for the years in which he failed to file or pay them, due to significant under-withholding. His state tax obligations were minor, but he failed to address them in a timely manner. When he realized that his security clearance eligibility was in jeopardy, he resolved the state tax issues and borrowed money to repay a portion of his Federal tax delinquencies. He made one payment toward that loan, but did not demonstrate that he could afford to continue paying it back while having sufficient funds withheld to meet his tax obligations in the future. This evidence is insufficient to establish mitigation under any of the foregoing provisions for his irresponsible actions.

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 relevant 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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is an accountable adult, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. His financial irresponsibility is ongoing toward his Federal income tax delinquency, which did not arise under circumstances that were shown to be beyond his control, and remains unresolved despite his continuous full employment during the period involved. He offered no evidence of financial counseling, rehabilitation, better judgment, or responsible conduct in other areas of his life. The potential for pressure, coercion, and duress remains a concern.

Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to 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:	Against Applicant
Subparagraph 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.

DAVID M. WHITE
Administrative Judge