



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



In the matter of:)	
)	
)	ISCR Case No. 14-01994
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *pro se*

12/23/2014

Decision

CURRY, Marc E., Administrative Judge:

Although Applicant’s financial problems initially stemmed from a six-month period of underemployment in 2008, he has failed to take any action toward resolving his delinquent debts since then, despite earning an annual income ranging from \$130,000 to \$190,000. Clearance is denied.

Statement of the Case

On June 20, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant 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) implemented by the DOD on September 1, 2006.

On July 16, 2014, Applicant answered the SOR, admitting the allegations and requesting a hearing. The case was then assigned to me on October 20, 2014. DOHA issued a notice of hearing on November 7, 2014, scheduling the hearing for December 1, 2014. The hearing was held as scheduled. At the hearing, I received five Government exhibits (GE 1-GE 5) and I considered Applicant's testimony. Also, I took administrative notice of one document (Hearing Exhibits (HE) I), a discovery letter, dated October 15, 2014, from Department Counsel to Applicant. The transcript (Tr.) was received on December 9, 2014.

Findings of Fact

Applicant is a 48-year-old married man with four children, ages 21, 17, 14, and 8. He earned a bachelor's degree in computer science in 2013. Also that year, he began working as an electronics engineer for his current employer, a defense contractor. (Tr. 14) Specifically, he is a digital developer working on a program that designs radar systems. (Tr. 14) He has held a secret clearance since 2005 and has worked in the information technology field since the mid-1990s.

Applicant's financial problems began in 2008 when he was laid off from his job. (Tr. 16) He was underemployed for the next six months. Although Applicant began working part-time as a consultant, he was unable to match his previous full-time income. (Tr. 16) Moreover, at or about this time, his son suffered a sports-related injury. Because Applicant had no health insurance at the time, he was unable to pay the ensuing medical bills timely. (Tr. 16)

By 2009, Applicant's income began stabilizing, as he found full-time employment and continued to work as a consultant. In 2010, Applicant earned \$100,000 from his full-time job and \$90,000 from his part-time consulting job. (Tr. 20) In 2011, his income totaled \$175,000. (Tr. 20) Over the next three years after gaining full-time employment, Applicant spent approximately \$70,000 renovating his home. [cite]

After gaining a full-time job in 2009, Applicant did not set aside any of his consultant earnings to pay his federal and state income taxes. (Tr. 23) He testified that he was so preoccupied with satisfying debt incurred in 2008 that he neglected saving some of his income to pay his income taxes. Subsequently, when his income taxes became due, he did not have the income to pay them. (Tr. 16) Consequently, Applicant owes the federal government \$63,000 in delinquent income taxes for tax years 2010 and 2011, and he owes delinquent state income taxes of \$11,924. In 2014, the state government entered a lien on his property for the delinquent state income taxes. (Answer at 1)

Applicant also owes 15 other creditors for delinquent debts totaling \$19,500, as listed on the SOR, stemming from the period that he was unemployed. Eight of these SOR debts are for less than \$500 (SOR subparagraphs 1.d, 1.e, 1.g, 1.j, 1.k, 1.l, 1.p, and 1.q). Between 2009 and 2011, Applicant spent between \$60,000 and \$70,000 renovating his home. (Tr. 23)

Applicant intends to retain an attorney to help him settle the income tax delinquencies, and he intends to refinance his home and use the equity to satisfy the other delinquent debt. Currently, Applicant owns his home in full, and pays no mortgage. Its fair market value is approximately \$125,000. (Tr. 32) As of the hearing, Applicant had neither met with an attorney, nor initiated the home refinance. (Tr. 30)

Applicant's career has continued to flourish. In 2012, he earned total income of \$130,000, and in 2013, he earned approximately \$140,000. Currently, his combined annual salary is \$170,000.

Applicant maintains a budget. He has approximately \$1,500 of monthly discretionary income. (Tr. 29)

Policies

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 together with the factors listed in the adjudicative process. 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."

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 applicant or proven by department counsel. . . ." The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, "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." (AG ¶ 18) Applicant owes creditors delinquencies totalling approximately \$95,000. Of that, \$74,000 constitutes federal and state income taxes. AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

The following mitigating conditions under AG ¶ 20 are potentially 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Although Applicant's financial problems stemmed from a six-month underemployment in 2008, he has not yet taken steps to resolve his delinquent debts since gaining full-time employment, despite earning income since 2010 that has ranged from \$130,000 to \$190,000 annually. Instead, upon gaining full-time employment in 2009, he chose to focus on home renovations, spending up to \$70,000 over the next three years on home improvements. Under these circumstances, I conclude that none of the mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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.

Since regaining full-time employment in 2009, Applicant has had the means to pay his delinquencies, but has procrastinated, choosing instead to make expensive home renovations. Such a decision epitomizes the type of irresponsibility and bad judgment that disqualifies applicants from security clearance consideration. Upon

considering this case in the context of the whole-person concept, I conclude that Applicant has failed to mitigate the security concern. Clearance is denied.

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

Subparagraphs 1.a - 1.q: 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.

MARC E. CURRY
Administrative Judge