



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



In the matter of:)
)
) ISCR Case No. 14-02371
)
Applicant for Security Clearance)

Appearances

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

03/18/2016

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance to work in the defense industry. The debts alleged in the Statement of Reasons (SOR) remain unresolved. Furthermore, Applicant has not presented evidence to show that he has changed the financial practices that caused his financial problems. Clearance is denied.

Statement of the Case

On August 7, 2014, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant’s security clearance.

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

Applicant timely answered the SOR and initially requested a hearing on the written record.² In April 2015, receiving Government's written case, Applicant requested a hearing.³ On August 6, 2015, the Defense Office of Hearings and Appeals Hearing Office issued a Notice of Hearing and I issued a prehearing order to the parties regarding the exchange and submission of discovery, the filing of motions, and the disclosure of any witnesses.⁴ The parties complied with the terms of the order.⁵ On August 19, 2015, Applicant retained counsel. Days before the hearing, Applicant's counsel sought a continuance to help Applicant resolve his tax issues. Because Applicant had been on notice of the tax issue since 2013, I denied the request, but elected to keep the record open until October 30, 2015. Ultimately, Applicant decided to appear at the hearing without counsel.⁶

The hearing proceeded as scheduled on August 27, 2015, I admitted Government's Exhibits (GE) 1 through 6 and Applicant's Exhibits (AE) A through F, without objection. I also received the testimony of two witnesses for the Applicant. After the hearing Applicant timely submitted AEs G through J, which were admitted without objection from Department Counsel. Well after the close of the record, Applicant submitted three documents being identified as AE K for the record. It is also admitted. I received the transcript (Tr.) on September 10, 2015.

Findings of Fact

Applicant, 68, works as an architect. Since at least 2012, he has been employed by federal contracting companies to work on U.S. construction projects abroad. Applicant previously held a security clearance when he served in Vietnam. More recently, Applicant was granted an interim clearance in September 2013. His access level was downgraded in August 2014. He completed his most recent security clearance application in September 2013. The ensuing investigation revealed a \$13,000 state income tax lien (SOR ¶ 1.a), a 2009 judgment for \$433 (SOR ¶ 1.b), and five other delinquent accounts, totaling \$1,700 (SOR ¶¶ 1.c – 1.g). Applicant admits responsibility for all the alleged debts except the judgment alleged in SOR ¶ 1.b.⁷

In 2007, State 1, Applicant's state of residency, filed the tax lien alleged in SOR ¶ 1.a. At hearing, Applicant testified that he failed to file and pay state and federal income taxes for a number of years between 1994 and 2014.⁸ Between 1990 and 2005,

² Answer.

³ Hearing Exhibit (HE) III.

⁴ The prehearing scheduling order is appended to the record as HE I.

⁵ The discovery letter, dated July 13, 2015, is appended to the record as HE II.

⁶ Tr. 12-14.

⁷ Tr. 25-28; GE 1-2, 4-6.; AE A-B, F.

⁸ At hearing, Applicant presented evidence regarding possible federal tax issues. In 1998, the IRS filed a \$44,000 tax lien against Applicant for his 1994 tax liability. The IRS released the lien in 2012 when the

Applicant worked in two different partnerships.⁹ During the first partnership, Applicant relied on the partnership's bookkeeper to file his personal income taxes. According to Applicant, the bookkeeper timely filed his returns, but made errors that resulted in him being assessed erroneous income tax liabilities. He did not take any steps to amend his returns. In the second partnership, Applicant believed the partnership's accountant was also handling his personal income tax filings. He learned of his mistaken assumption in 2007, but did not take steps to file his tax returns.¹⁰

When asked about the state tax lien during his November 2013 background interview, Applicant acknowledged that the 2007 lien may be related to an earlier lien filed against him in 1994. He vowed to take care of the issue. In April 2014, State 1 sent a garnishment order to Applicant's employer of record to begin collecting \$133,000 in unpaid state taxes for years 1994-2000, 2004-2005, and 2010-2011. However, the garnishment was never enforced because Applicant did not work for the employer at the time. The garnishment caused the employer to withhold their offer of employment until the resolution of this adjudication. In March 2015, State 1 filed another tax lien against Applicant for \$8,900. He testified that he was not aware of the lien. Applicant testified that he tried to file nine years of tax returns in 2014. The filings were rejected because they were on the wrong forms. Days before the hearing, Applicant retained a tax attorney to help him resolve his tax issues. He retained a certified public accountant in October 2015. After the hearing, Applicant provided copies of the facsimile coversheets sent to State 1's taxing authority to show that he filed state tax returns for the years 1995 to 2014 in December 2015. However, Applicant did not provide copies of the actual returns or any evidence that he paid or otherwise resolved the \$13,000 tax lien alleged in the SOR.¹¹

The other six debts alleged in the SOR, totaling approximately \$2,100, are also unresolved. Applicant acknowledged each debt during his November 2013 background interview. He claimed to have paid the debts alleged in SOR ¶¶ 1.c and 1.d, but did not provide corroborating documentation. He also indicated that he had made payment arrangements for the other debts, including the judgment alleged in SOR ¶ 1.b. However, at the hearing, Applicant admitted that he had not taken any steps to resolve the remaining delinquent accounts. He now refuses to pay the judgment because he does not agree with the court's ruling against him.¹²

lien became unenforceable because of the statute of limitations. He also alluded to outstanding federal tax issues for an unspecified number of years between 1994 and 2014. In his first post-hearing submission, Applicant provided federal tax returns for the years 1995 – 2000, which were prepared by his accountant in November 2015. However, Applicant's tax issues, while not insignificant, are not alleged in the SOR and were not addressed in depth during this adjudication. (Tr. 76-78. AE C, J)

⁹ The dates of the partnerships are unclear from the record.

¹⁰ Tr. 29-38; GE 5-6; AE I.

¹¹ Tr. 38-39, 42-43, 66-72, 74-76; GE 2-3; AE G, K.

¹² Tr. 43-45, 61-66; GE 2.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. 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.

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." The applicant has the ultimate burden of persuasion to obtain a favorable security 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 safeguard 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 EO 10865 provides that adverse 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

Unresolved delinquent debt is a serious security concern because failure to “satisfy debts [or] 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.”¹³ Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The SOR alleges that Applicant owes seven creditors approximately \$15,100 in delinquent debt. The largest of Applicant’s delinquent debts is a \$13,000 tax lien filed against him in 2007. The remaining six debts became delinquent between 2008 and 2012. Applicant’s admissions and the credit reports in the record establish a *prima facie* case that Applicant has a history of not meeting his financial obligations and that he has demonstrated an inability and willingness to pay his bills.¹⁴

None of the financial considerations mitigating conditions apply in this case. All of the debts in the SOR remain unresolved. As a result, Applicant’s financial problems are considered ongoing. Furthermore, Applicant’s financial issues occurred under circumstances most likely to recur in the future. The 2007 lien alleged in the SOR proved to be the tip of the iceberg of Applicant’s tax problems. He deliberately and knowingly failed to file state tax returns or pay his state tax liability for a number of years between 1994 and 2014. His reasons for these lapses were not caused by circumstances beyond his control, but a failure to properly manage his personal responsibilities. Although Applicant claims that he filed 20 years of state tax returns in December 2015, this is not an indication that the underlying problem is under control or even resolved. He did not provide any evidence that he paid any outstanding balances. Nor did he provide any assurances that he will honor his state tax obligations going forward.

As early as 2007, Applicant knew that the state was trying to collect unpaid taxes from him. After his November 2013 background interview, he was on notice that the state tax issue was relevant to his security clearance adjudication. He did not take any steps to resolve the issue until this hearing was imminent. Applicant’s behavior indicates that he ultimately took steps to resolve his tax issue in hopes of securing a favorable decision in this case, not to satisfy his obligation to file and pay his taxes. Based on the record it is also possible that Applicant has unresolved federal tax issues, but those are beyond the scope of this case.

After reviewing the record, I have doubts about Applicant’s current suitability for access to classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). Applicant has failed to mitigate the security concern raised by his history delinquent debts. Furthermore, information in the record about his

¹³ AG ¶ 18.

¹⁴ AG ¶¶ 19(a) and (c).

repeated failure to meet his state tax obligations heightens the concerns about his suitability to enter into a fiduciary relationship with the federal government. Because Applicant has not demonstrated a clear track record of rehabilitation or reform, it is not appropriate to grant him access to classified information at this time.

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.g: Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Nichole L. Noel
Administrative Judge