



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS and APPEALS**



In the matter of:)
)
) ISCR Case No. 14-02694
)
Applicant for Security Clearance)

Appearances

For Government: Caroline Heintzelman, Esq., Department Counsel
For Applicant: John E. Cromwell, Esq.

08/11/2015

Decision

HEINY, Claude R., 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. He owes the IRS \$46,000 for tax years 2008 through 2013 and has ten collection accounts totaling approximately \$14,000. He has arranged a payment plan to repay his tax obligation. The financial considerations security concerns have been resolved. Clearance is granted.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on October 2, 2014, the DoD issued a Statement of Reasons (SOR) detailing financial considerations

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On November 5, 2014, Applicant answered the SOR and requested a hearing. On January 28, 2015, I was assigned the case. On January 28, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on February 11, 2015.

At the hearing, Government's Exhibits (Ex) 1, 2, 4 and 5² and Applicant's Exhibits A through C were admitted without objection. Applicant testified at the hearing as did three additional character witnesses.³ The record was held open to allow Applicant to submit additional information. Additional material (Ex. D through H) was submitted and admitted into the record without objection. On February 20, 2015, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he denied having any unpaid federal tax returns (SOR 1.c), denies having a cell phone bill (SOR 1.m, \$79), and denies a \$45 collection account (SOR 1.n) He admitted the remaining allegations. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 35-year-old lead aviation mechanic who has worked for a defense contractor since February 2010, and seeks to obtain a security clearance. From July 1998 through December 2003, he honorably served in the U.S. Marine Corps, separating as a sergeant (E-5). (Ex. 3, Tr. 20)

Applicant's co-workers, supervisors, and friends state: Applicant is a hard worker, an excellent mechanic, is intelligent, dependable, dedicated, compassionate, honest, trustworthy, and has excellent work ethics. Applicant places the value of his employer and work assignment at the same level as his personal wants and needs. (Ex. A-1, A-2) He has received commendation awards for his superior duty performance both in the Marine Corps and in his civilian job. (Ex. A-3, A-4, A-5, A-6, Tr. 57 - 72)

After leaving the Marine Corps, Applicant was unemployed for two months in January and February 2004. From April 2004 through May 2007, he was a full-time structural mechanic. From May 2007 through August 2007, he was a full-time flight line mechanic with a different company. From August 2007 through January 2010, Applicant changed companies and was again a full-time flight line mechanic. In January and February 2010, he was unemployed and moved from the east coast to the southern Midwest. (Ex. 2) In February 2010, he obtained a job with his current employer. (Ex. 1)

² No Ex. 3 was offered.

³ It is noted that the three witnesses, who included the depot manager, made an hour and a half trip each way to attend the hearing and support Applicant's request to obtain a security clearance.

From 2008 through 2013, Applicant failed to pay federal income tax as required. (Tr. 2) In 2008, when he returned from his overseas contractor job, he was unable to pay his taxes. In 2008, he entered into an agreement with the Internal Revenue Service (IRS) whereby he was paying \$75 monthly on his delinquent tax bill. (Ex. 2) He asserted he also paid an additionally \$2,000 annually on four occasions. (Ex. 2)

In July 2013, Applicant and his wife separated, with his wife and children leaving the state to accept a job offer and move closer to her parents. (Ex. 2) He provides \$700 monthly child support and medical insurance for his family and is current on his support obligations. (Ex. 2, Ex. B-1) He and his wife remain separated. He incurred a loan (SOR 1.k, \$869) to help pay for the move. (Tr. 35) The loan remains unpaid and he has not had recent contact with the lender. (Tr. 35)

In November 2013, when Applicant completed his Electronic Questionnaires for Investigations Process (e-QIP), he indicated that starting in 2008, when he returned as a contractor from overseas, he had fallen behind on his federal income tax.⁴ At that time, he estimated he owed federal tax of approximately \$16,000. (Ex. 1) He also indicated he had a \$5,735 collection account (SOR 1.f, \$8,380), a \$1,548 (SOR 1.i) cell phone collection debt, a \$304 (SOR 1.h) collection debt on a different cell phone account, and a \$684 (SOR 1.j, \$869) charged-off automobile debt. (Ex. 1)

A summary of Applicant's income tax liability and amount of tax due follows:

Tax Year	Gross Income	Taxable Income	Federal Tax Liability	Tax Withheld	Amount Due	Refund
2007 (Ex. 2)		\$56,000	\$11,257	\$8,758	\$2,499	
2008 (Ex. 2)	\$160,000	\$102,000	\$27,700	\$17,353	\$10,347	
2009 (Ex. 2)	\$47,800	\$38,482	\$5,256	\$7,382		\$2,126
2010 (Ex. C-3)	\$69,000	\$64,000	\$12,700	\$7,533	\$5,200	
2011 (Ex. C-4)	\$66,000	\$60,000	\$11,200	\$3,321	\$8,000	
2012 (Ex. D)			\$2,200		\$2,200	
2013 (Ex. 2)	\$69,000	\$59,000	\$11,100	\$6,500	\$4,600	
2014 (Ex. E)	\$69,000	\$63,000	\$10,600	\$12,000		\$1,369

In April 2012, Applicant started making \$75 bi-weekly payments on the amount owed. (Ex. 2) The IRS documents show Applicant's payment history. As of August 2014, he was current on his monthly payments. As of August 2014, approximately \$5,000 was yet owed for tax year 2008. While working overseas, his annual salary was \$160,000 of which \$85,000 was exempt from federal tax due to the foreign earned income exclusion. For tax year 2009 Applicant was entitled to a refund, which was applied to his 2007 tax debt. (Ex. 2)

⁴ Applicant lives in a state that does not collect state income tax.

A copy of Applicant's 2012 federal tax return is not part of the record. However, a letter from the IRS indicates there was an \$8,817 cancellation of debt occurred during 2012, which increased his federal tax by \$2,200. (Ex. D) Applicant did not indicate which debt had been cancelled. For tax year 2014, Applicant was due a refund of \$1,369, which was applied to his tax debt. (Ex. E)

The amount of tax owed as shown on Applicant's tax returns was approximately \$25,000 for tax years 2008 through 2013. This figure does not include additional amounts assessed by the IRS for penalties and interest. As of September 2014, Applicant's federal tax liability was \$39,421 for tax years 2008 through 2013. He had entered into a repayment arrangement with the IRS whereby he paid \$150 every two weeks. (SOR Answer) In February 2015, he entered into a new repayment plan with the IRS whereby he would pay \$275 every two weeks. As of February 2015, his federal tax liability for tax years 2008 through 2013 was \$46,267. (Ex. C-2)

In January 2014 and February 2014, Applicant was asked about his delinquent accounts during a Personal Subject Interview (PSI). (Ex. 2) At that time, he indicated that in 2013, when he and his wife separated and she left the state, he moved in with a friend and owed a \$500 utility bill and \$600 cable bill. He stated a credit card account (SOR 1.f, \$8,380) became delinquent when he was maintaining two households after separating from his wife. (Ex. 2) At that time, he said he was going to contact the creditor to establish a repayment arrangement to satisfy this debt. In August 2014, the creditor offered to settle the matter for \$4,189, which was half of the amount owed. (Ex. 2) There is no documentation that the offer was accepted or that payment has been made in accord with the offer.

During Applicant PSI, he was questioned about a \$1,548 (SOR 1.i) wireless telephone account that had become delinquent in 2008, a second wireless telephone account (SOR 1.h, \$304) in collection, a \$684 (SOR 1.j) charged-off debt related to an automobile loan account, a \$205 (SOR 1.e) medical collection account, a \$79 (SOR 1.m) telephone service collection account, and a \$45 (SOR 1.n) medical collection account. He asserted he was going to attempt to set up a repayment plans on these debts. (Ex. 2) He has attempted to contact the medical provider of the \$45 account, but has been unsuccessful. (Tr. 36)

In August 2014, Applicant responded to written financial interrogatories. At that time, he disputed the amounts owed on SOR 1.i and SOR 1.f. Six months after discussing the debts in his PSI, he no longer recognized nor knew anything about the debts in SOR 1.e (\$250), SOR 1.m (\$79), and SOR 1.n (\$45). (Ex. 2) He asserted he intended to obtain a loan from his 401(k) retirement plan and pay the valid SOR debts. (Ex. 2) As of August 2014, when he completed a Personal Financial Statement (PFS), his net monthly remainder (monthly income less monthly expenses and monthly debt payment) was \$635. (Ex. 2)

In April 2015, the \$304 account (SOR 1.h) was settled and paid. (Ex. G) The creditor of the \$684 (SOR 1.j) charged-off account offered to settle the debt for \$450,

which Applicant accepted and paid. (Ex. F) The debt originated when his wife moved to a new location and missed three car payments. (Tr. 35) With the payment on the settlement offer, the car loan has been paid. (Tr. 49) He paid the \$266 collection debt (SOR 1.g) and the \$79 collection debt (SOR1.m). (Ex. C-5, C-6, Tr. 33, 36)

Applicant contacted the creditor of the \$250 medical debt listed in SOR 1.e. As of the hearing, the creditor had yet to respond. (Tr. 31) The creditor of the \$8,380 account had offered in August 2014 to settle for half the balance. At the hearing, he indicated that now that he has paid off two other debts he is in a position to start making payments on this debt. (Tr. 32) He was going to contact the creditor to see if the offer is still valid and, if so, to set up a repayment plan. (Tr. 32)

Applicant contacted the creditor of the \$1,548 (SOR 1.i) account and is waiting for a response. (Tr. 34) He disputes the amount of the debt. He had cell phone service when his service was switched without notice to him from one company to another. His plan with his original provider offered free data. The second provider charged for data resulting in the debt. He had no information about the \$1,325 debt (SOR 1.l) and would have to look into it. (Tr. 36)

Applicant recently obtained a \$2,500 loan from his 401(k) retirement plan to pay for repairs to his car. (Tr. 40) He has \$6,000 in his retirement plan. (Tr. 41) He has not had any credit counseling. (Tr. 42) He is concentrating on paying his small debts. (Tr. 48) He currently lives with a friend paying \$150 monthly for rent and \$210 for utilities. (Tr. 52)

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 must be considered 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 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 interests of 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 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 Executive Order (EO) 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.” See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent

substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems. Applicant owes the IRS \$46,000 for tax years 2008 through 2013. He also had ten collection accounts totaling approximately \$14,000. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," AG ¶ 19(c), "a history of not meeting financial obligations," and AG ¶ 19(g), "failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same," apply.

Five Financial Considerations 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;
- (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's federal income tax problems started in 2008 when he returned from working overseas. Between 2007 and 2014, he was entitled to a tax refund on two occasions, for tax years 2009 and 2014. For all other years he was under withheld. In April 2010, he started repaying his delinquent obligation at a rate of \$75 every two weeks. He asserts he had a repayment arrangement with the IRS in 2008, but failed to show any documentation for that agreement or payment in accord with the agreement. In September 2014, he raised his bi-weekly payments to \$150 every two weeks. He owed approximately \$39,400. In February 2015, he raised the payment rate to \$275 every two weeks. The amount owed had increased to \$46,267 due in part to additional

interest and the notification in 2014, that a cancellation of debt in 2012 had increased his tax obligation by \$2,200. Although his returns were not timely filed, all returns have now been filed as required.

Applicant had ten collection accounts. He has paid four of the accounts and a fifth creditor offered to settle an \$8,380 debt for \$4,189. He has not received a response or had contact with the other five collection accounts that total approximately \$4,000.

Because Applicant has multiple delinquent debts and his financial problems are continuing in nature, he receives minimal application of the mitigating conditions listed in AG ¶ 20(a). Under AG ¶ 20(b), Applicant is separated from his wife and experienced the financial burden associated therewith. He incurred expenses to move his wife to a new location. He is current on his child support obligations. AG ¶ 20(b) has limited applicability.

Under AG ¶ 20 (c) and ¶20 (d), Applicant has paid four of the ten collection accounts and has an offer reducing an additional debt to \$4,100. The other five debts total another \$4,000. He has an agreement repaying the IRS \$275 every two weeks on his income tax obligation. The tax obligation is large, but he has consistently made payments to the IRS since at least 2010. I believe he will continue to honor his repayment agreement with the IRS until the entire obligation has been met. He has had no financial counseling, but his financial problems appear to be under control. AG ¶ 20(c) and ¶ 20(d) apply.

Applicant has challenged the amount owed on some of his accounts. The mitigating condition listed in AG ¶ 20(e) does not apply because Applicant has not provided documented proof to substantiate the basis of any disputed accounts.

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.

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 the facts and circumstances surrounding this case. He honorably served in the U.S. Marine Corps. The debts incurred were not the type that indicates poor self-control. Money was not spent frivolously. The debts set forth in the SOR were not incurred on luxuries. His financial problems resulted from the underwithholding of taxes from his salary.

The issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) Applicant has acted in good faith to address his delinquent financial obligations. Good faith requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Since 2010, Applicant has made regular payments to the IRS.

Applicant has established a track record of making timely payments on his debt to the IRS. The concept of “meaningful track record” includes evidence of actual debt reduction through payment of debts. An applicant is not required to establish that he has paid off each and every debt listed in the SOR. All that is required is for him to demonstrate he has established a plan to resolve his delinquent debt and has taken significant action to implement that plan. I must reasonably consider the entirety of Applicant’s financial situation and his actions in evaluating the extent to which that plan is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan may provide for payment on such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant is paying his past-due tax obligation. He is attempting to address his smaller delinquent accounts before attempting to pay the larger obligations. If the offer is accepted on the one debt the entirety of his delinquent accounts, excluding his tax obligation, is approximately \$8,000. This is an amount within Applicant’s means to address.

Overall, the record evidence leaves me without questions or doubts about Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated 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 Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a – 1.n: 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. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge