



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



In the matter of:

ISCR Case No. 14-03392

Applicant for Security Clearance

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

February 6, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has a history of failing to address his finances in a timely manner. He still owes approximately \$21,720 to the IRS for back taxes for the 2008, 2009, and 2011 tax years. He has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On March 26, 2013, Applicant submitted an e-QIP. On August 4, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 September 1, 2006.

Applicant answered the SOR on September 19, 2014 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on November 26,

2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 26, 2014, scheduling the hearing for December 16, 2014. The hearing was rescheduled on December 16, 2014 to January 23, 2015, due to unforeseeable circumstances. The hearing was convened as scheduled on January 23, 2015. The Government offered Hearing Exhibit (HE) I and Exhibits (GE) 1 through 6, which were admitted without objection. Applicant offered Exhibits (AE) A through G, which were admitted without objection. Applicant testified on his own behalf. The record was left open for Applicant to submit additional exhibits and on January 26, 2015, Applicant presented two additional exhibits and a brief marked AE H through AE I. Department Counsel had no objections to AE H through AE I and they were admitted. The record then closed. DOHA received the transcript of the hearing (Tr.) on February 3, 2015.

Findings of Fact

Applicant is 59 years old. He has been employed with a Government contractor for the past 32 years. He held a security clearance in the 1980's and 1990's while working on classified programs. He earned a bachelor's degree in 1977. He is married and has one adult child. (GE 1; Tr. 31-32.)

The Government alleged that Applicant is ineligible for a clearance because he has made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information. The SOR identified seven delinquent debts totaling \$90,482. Applicant admitted allegations 1.a through 1.f in his Answer.¹ He denied allegation 1.g at hearing. (Tr. 10-11.) The alleged debts were listed on credit reports dated March 30, 2013; April 9, 2014; November 21, 2014; and January 22, 2015. (Answer; GE 2; GE 4; GE 5; GE 6.)

He attributes his financial delinquencies to "personal mismanagement of income." He acknowledged that he spent a significant amount of money sending his daughter to a private school that could have been used to satisfy his debts. (Tr. 33.) His delinquent debts are set forth below.

Applicant was delinquent on a mortgage account in the amount of approximately \$21,247, with a total loan balance of \$275,611, as stated in SOR subparagraph 1.a. Applicant testified that this loan became approximately four months past due "around the holidays." He produced an account statement that shows he has rehabilitated the loan and is now current on his monthly payments. This debt is being resolved. (AE A; Tr. 36-38.)

Applicant is indebted in regards to two Federal tax liens issued against him in February 2011 and September 2011, in the amounts of \$39,764 and \$24,082.² These debts are alleged in SOR subparagraphs 1.b and 1.c as delinquent.

¹ He failed to admit or deny 1.g in his Answer.

² Additionally, an October 21, 2005 JPAS entry, reflects that Applicant was unable to make payment on his Federal tax debt in 2001. (GE 2.)

Applicant failed to file his annual Federal tax returns in 2004, 2005 and from 2008 to 2012 in a timely manner. The IRS prepared a substitute tax return for Applicant relating to his 2004 Federal tax returns, which it filed in 2007. His 2005 Federal tax returns were filed in June 2009. The IRS prepared a substitute tax return for Applicant relating to his 2006 Federal tax returns, which it filed in August 2008. His 2007 Federal tax returns were filed late in May 2008. His 2008, 2009, and 2010 Federal tax returns were filed in June 2011. His 2011 and 2012 Federal tax returns were filed in April 2014. He did not file his tax returns because he did not have the money to satisfy his tax debt at that time. He testified he filed his 2013 Federal tax returns in a timely manner, but did not provide documentation of this filing.

He explained that he established a payment plan with the IRS to repay this debt through monthly payments of \$1,200. The IRS transcripts show that he made an installment agreement to repay his tax debt in July 2011, but was “no longer in installment agreement status” in October 2012. He reached another installment agreement in approximately April 2014. The IRS transcripts show he satisfied his delinquent taxes for tax years 2004 through 2007. He owes \$15,655.59 for 2008; \$5,451.68 for 2009; nothing for 2010; \$613.09 for 2011; and nothing for 2012. He claims he fully repaid the \$39,764 debt and the evidence shows that lien has been released. He intends to continue making monthly payments until the remaining \$21,720.27 debt has been satisfied. (GE 5; GE 6; AE B; Tr. 44-52, 60.)

Applicant is indebted on two medical collection accounts in the amount of \$87 and \$106 as stated in SOR subparagraphs 1.d. and 1.e. These debts were for unpaid co-pays due as a result of medical treatment. Applicant produced a copy of his bank statement showing he paid this creditor a payment of \$155.21 on December 15, 2014, and \$83.70 on January 26, 2015. These debts are resolved. (AE H; Tr. 39-41.)

Applicant is indebted on a medical collection account in the amount of \$173 as stated in SOR subparagraph 1.f. This debt was for a co-pay for medical treatment. Applicant testified that he paid this debt. He presented a letter from the creditor that showed the account “is closed” and would be removed from Applicant’s credit report. It no longer appears on his January 2015 credit report. This debt is resolved. (GE 6; AE F; Tr. 39-41.)

Applicant’s wages were garnished by his state’s taxation authority for unpaid income taxes for the tax year 2011, in the amount of \$5,023.28, as stated in SOR subparagraph 1.g. Applicant incurred this debt by failing to file his state income tax returns for multiple, unspecified years. He produced documentation from his state taxation authority that reflects he now has a zero balance. This debt is resolved. The record also reflects that his wages were previously garnished for an unpaid state tax debt in May 2011 in the amount of \$5,001, and in July 2008 in the amount of \$21,499.16. (GE 2; AE C; Tr. 41-44.)

Applicant currently earns \$107,000 per year in salary. His wife is employed and earns approximately \$68,000 per year. He estimated his net worth to be approximately \$700,000 to \$800,000. He inherited a home valued at approximately \$700,000 and

intends to sell the home. He will use the proceeds of the sale to fully repay his Federal tax debt. (Tr. 33-35, 52-56.)

Applicant has not attended financial counseling. (Tr. 57.) He has one additional \$58 delinquency identified on his January 2015 credit report. He did not recognize the account. (Tr. 59.)

Applicant's friend and fellow coach wrote a letter of support on Applicant's behalf. He indicated Applicant is "ethical, dedicated, trustworthy, honest, and responsible." He also emphasized the commitment Applicant has to his volunteer work in the community. Applicant's work performance appraisal shows he "achieves expectations." (AE D; AE I.)

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 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 AG ¶ 2(a) describing 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 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, 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 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. 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 as to 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

Guideline F, Financial Considerations

The security concern 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. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Applicant testified that he spent beyond his means and as a result, could not file and pay his Federal tax obligations and other debts. He negligently fell delinquent on his home mortgage and failed to satisfy co-pays on medical bills. His tax debts extend from 2004 and continue to present. His actions have demonstrated both a history of not addressing his debt and an unwillingness to do so. The evidence is sufficient to raise the above disqualifying conditions.³

Four Financial Considerations mitigating conditions under AG ¶ 20 are potentially applicable:

³ AG ¶ 19(g) does not apply in this case because there is no allegation that Applicant failed to file his Federal income tax returns.

(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.

Given Applicant's record of failing to pay his Federal and state tax debts, I cannot find that future financial problems are unlikely to occur, despite the fact that Applicant has satisfied or is currently repaying all of the alleged debts. His state tax obligations were repaid involuntarily, through garnishment. His Federal taxes were paid only after a lien was filed against him. He established an installment agreement with the IRS in 2011, but the agreement was terminated in 2012 before the debt was satisfied. It wasn't until 2014 that Applicant reestablished another installment agreement to satisfy his Federal tax debt. It is too soon to tell if his past failure to pay his Federal and state income tax from 2004 to 2012 has been mitigated by positive and definite action. Additionally, his credit report reflects a new collection account. His payments of his delinquent medical bills and his efforts to bring his mortgage current, present some mitigation, but do not overcome his habitual tax issues. I conclude, therefore, that AG ¶¶ 20(a), 20(b), 20(c) and 20(d) do not fully apply in mitigation of the facts of Applicant's case.

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 all of the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant performs community service through coaching and is known to be honest. However, Applicant's habitual unwillingness to follow rules for filing income tax returns raise concerns about his reliability, trustworthiness, and ability to follow rules and regulations necessary to protect classified information, under the whole-person concept. Applicant has exercised questionable judgment in his financial priorities. 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 the whole-person concept against the Applicant.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge