



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



In the matter of:)
)
) ISCR Case No: 14-05854
)
)
Applicant for Security Clearance)

For Government: Caroline Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

01/21/2016

Decision

DAM, Shari, Administrative Judge:

Applicant has a history of financial problems, including failing to timely file tax returns and pay delinquent taxes. He failed to provide sufficient evidence to mitigate the financial security concerns and establish a track record of responsibly managing his tax obligations. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Statement of the Case

On February 28, 2014, Applicant submitted an electronic Questionnaire for Investigations Processing (e-QIP) as part of a re-investigation for his security clearance. On February 5, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative*

Guidelines for Determining Eligibility for Access to Classified Information effective within the DoD on September 1, 2006.

Applicant answered the SOR in writing (Answer) on April 6, 2015, and requested a hearing before an administrative judge. On August 13, 2015, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On September 8, 2015, DOHA issued a Notice of Hearing, setting the case for September 25, 2015. The case proceeded as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence without objection. Applicant testified. He offered Applicant Exhibits (AE) A through D into evidence without objection. The record remained open until October 19, 2015, in order to provide Applicant time to submit additional documents. DOHA received the hearing transcript (Tr.) on October 5, 2015. Applicant timely submitted six exhibits that I marked as AE E through J, and admitted into the record without objection. Department Counsel also requested admission of GE 6, a copy of Applicant's bankruptcy petition. It is admitted without objection.

Findings of Fact

In his Answer, Applicant admitted all four allegations contained in the SOR. His admissions are incorporated herein.

Applicant is 60 years old. He and his wife have been married for 27 years. He has one child and she has two children, all adults. Applicant's 15-year-old grandson lives with them, as his mother (Applicant's step-daughter) recently died. Applicant's wife receives disability benefits. He served on active duty in the Air Force from 1974 until 1977, and then inactive duty until 1980. He received an honorable discharge at the paygrade of E-4. He subsequently earned two associate's degrees and a certificate from a technical institute. (Tr. 17-19, 22.)

In February 2014 Applicant began employment for as an over-the-road truck driver. Since 1988 he has worked for this contractor four different times for a total of 12 years. (Tr. 20.) Prior to this job, he was employed by another company from August 2012 to February 2014. From July 2007 to March 2012 he owned and operated a truck that he used for work. He has held a Secret security clearance since 2002, when he obtained it for employment with a different defense contractor. (GE 2.)

When Applicant completed his February 2014 e-QIP, he disclosed to the Government that he had not filed his 2011 and 2012 federal and state income tax returns. He indicated that he did not have enough money to pay the taxes that he anticipated owing, and that he intended to file them "this year." (GE 1.)

In his Answer to the SOR, Applicant admitted that he failed to timely file Federal and state income tax returns for tax years 2011 and 2012. He also admitted that he owed his state \$2,825 for 2007 delinquent taxes and \$2,262 for 2006 delinquent taxes. He stated that he thought the Chapter 7 bankruptcy he filed in 2011 resolved those unpaid state taxes. (Answer.)

Applicant admitted that he filed his Federal and state income tax returns for 2011, 2012, 2013, and 2014 in April 2015.¹ (Tr. 27.) He said he filed the 2011, 2012, and 2013 returns late because he believed he would receive a refund for some of those years and he needed that money to pay anticipated delinquent taxes. (Tr. 26, 28.) According to a September 21, 2015 notification from the Internal Revenue Service (IRS), he owes \$195 for delinquent taxes for 2011. (AE E.) In August 2015 his state notified him that he owed \$1,037 for delinquent taxes from 2011. He paid the 2011 state tax bill on September 24, 2015. (AE H.) Based on information from the IRS, he received refunds from tax years 2012, 2013, and 2014. (AE A, B, C.)

Applicant has not resolved the state tax liens for 2006 and 2007. In a post-hearing submission, he said that each lien is about \$2,000, and that the state will not enforce the lien unless he owns property in the state or begins to make payments on it. He indicated that he spoke to a state's revenue agent over the telephone about these liens. (AE F.)

Applicant has a history of financial problems. As part of an investigation for a security clearance in 2002, he was interviewed by a government investigator about delinquent debts and a previous delinquent Federal tax lien. He indicated that he resolved the debts discussed during that interview. (GE 5.)

In September 2011 Applicant filed a Chapter 7 bankruptcy. In December 2011 the court entered a discharge order. It appears that court discharged about \$261,737 of delinquent debts, which included a \$188,000 mortgage, unpaid medical debts, car loans, and other debts. (GE 6.) He took a credit counseling course as a pre-requisite to filing the bankruptcy. (Tr. 26.)

During an interview with a government investigator in March 2014 regarding the reinvestigation for a security clearance, Applicant again discussed his financial problems. He stated that for the first two or three years after he and his wife purchased a truck in 2002, he drove as an independent contractor for a government contractor and easily met his financial obligations. Subsequently, the government reduced its contracts, resulting in a loss of income. In addition, gasoline increased to \$4 per gallon, and he stopped earning enough money to afford the truck's maintenance, gasoline costs, and living expenses. He also was supporting his step-children and a grandson for a long period of time. At some point, his wife stopped working with him. She is now disabled and receives disability benefits. (Tr. 39, 47; GE 2.) In April 2013 Applicant sold his truck and began working as an employee for companies. (Tr. 24.)

Applicant acknowledged that he has managed his finances poorly, but stated that he believes he has recently resolved most debts. He said that he and his wife have a

¹The SOR did not allege security concerns related to Applicant's failure to timely file federal and state returns for 2013 or his 2011 Chapter 7 bankruptcy. Hence, these facts will not be considered in an analysis of disqualifying conditions, but may be considered in an analysis of mitigating conditions and the whole-person concept.

budget, but that it is not written. (Tr. 26.) His wife handles all of the household finances because he is home only one weekend a month. He lives on \$150 per week and all other money goes into the household budget. (Tr. 36-37.) Post-hearing, Applicant submitted a budget, which gives a brief overview of income and expenses.² His family's income, including his wife's disability benefits, is about \$4,625. The monthly household expenses are about \$3,560, plus the \$600 he uses for his personal expenses. There is less than \$500 remaining at the end of the month. (Tr. 37; AE G.)

Applicant testified candidly and honestly. He does not use credit cards, tries to live within his means, and does not spend money he does not have. Working as an employee has allowed him to eliminate the high costs related to owning and driving his own truck. (Tr. 38-40.)

Applicant's employer is aware that his financial problems created security clearance concerns. (Tr. 50.) A manager for his employer stated that Applicant performs his duties in a timely and professional manner. (AE I.) The director of safety for his employer stated that Applicant handles all confidential shipments appropriately. He said that Applicant is honest and trustworthy. (AE J.)

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 (AG) list potentially disqualifying and mitigating conditions, which are useful 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(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 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.

²Included in the 2011 Chapter 7 bankruptcy is a copy of Applicant's detailed budget. It recorded his net monthly income as \$4,713, and numerous expenses related to owning and operating his truck used for employment.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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.”

A person who applies 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.

Section 7 of Executive Order 10865 provides that an adverse decision shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are 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.

AG ¶ 19 notes three disqualifying conditions that could potentially raise security concerns in this case:

- (a) inability or unwillingness to satisfy debts;
- (b) 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 timely file Federal and state tax returns for 2011 and 2012. He has unpaid state tax liens for 2006 and 2007, which he is unable or unwilling to resolve. The evidence is sufficient to raise those disqualifying conditions.

After the Government produced sufficient evidence of those three disqualifying conditions, the burden shifted to Applicant to produce evidence and prove mitigation of the security concerns. AG ¶ 20 sets forth four conditions that could potentially mitigate financial security concerns in this case:

- (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.

Applicant's history of financial problems began prior to 2006 and 2007 when he did not pay state income taxes, which resulted in unpaid tax liens and remain unpaid today. In 2011 he filed a Chapter 7 bankruptcy and discharged a substantial amount of delinquent debts. In April 2015 he filed his 2011, 2012, and 2013 tax returns, all of which were filed late. His tax issues have been ongoing for some time. AG ¶ 20(a) does not apply.

Applicant stated that he failed to timely file income tax returns for 2011, 2012, and 2013 because he did not have enough money to pay the outstanding taxes. He explained that the expenses related to owning and operating a truck and supporting a family prevented him from paying taxes over those years. While some of these circumstances may have been beyond his control, they do not justify his failure to file income returns for those years, or to act responsibly by contacting the taxing bodies to establish a minimal payment plan. AG ¶ 20(b) does not provide mitigation.

Applicant stated that he participated in credit counseling as a requirement for filing the 2011 bankruptcy. His written budget does not provide sufficient detail to determine whether he is able to meet all expenses or begin a repayment plan for the unpaid state taxes. It is unclear whether his finances are coming under control; thus, AG ¶ 20(c) has limited application. Although he filed his Federal and state tax returns for

2011, 2012, and 2013 late, he is now current on his tax filings. This exhibited a good-faith effort to resolve those issues, and supports the application of AG ¶ 20(d) as to the allegations related to failure to file tax returns. He has not made arrangements to resolve the unpaid state tax liens from 2006 or 2007; hence, AG ¶ 20(d) does not apply to those allegations.

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). They include the following:

- (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) 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 include 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 facts and circumstances surrounding this case. Applicant is an intelligent, articulate 60-year-old man, who honorably served in the military for three years, and has worked for defense contractors periodically since 2002. His current employer provided favorable comments on his performance. He participated in the security clearance process in 2002, and again in February 2014. During both investigations he discussed financial problems, including tax issues. His financial problems became more substantial in mid-2000 when he owned and operated a truck he used for work, and experienced a decrease in income and increase in expenses. Those circumstances resulted in his 2011 Chapter 7 bankruptcy and the discharge of \$261,000 in delinquent debts. His state tax liens for 2006 and 2007 were not discharged in the bankruptcy and remain unpaid. While the amount of those liens is not substantial, Applicant's history of not managing his tax obligations is concerning and raises questions about his reliability. At this time, he has not established a sufficient track record of responsibly handling his financial affairs. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant did not mitigate the security concerns arising under the financial considerations guideline.

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

SHARI DAM
Administrative Judge