



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



In the matter of:)
)
) ISCR Case No. 15-01256
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: Ryan C. Nerney, Esq.

June 20, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant had tax liens totaling \$143,299 lodged against him for unpaid taxes related to his business he operated from 1997 to 2009. He also had two unresolved medical debts and a delinquent utility bill totaling \$3,244, collectively. He has resolved both of his medical debts, the utility bill, and all but one tax lien. He is making regular monthly payments on his remaining tax delinquency. Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for Financial Considerations. His request for a security clearance is granted.

Statement of the Case

On October 29, 2015, 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 November 17, 2015 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on March 15, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 31, 2016, scheduling the hearing for April 18, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 6, which were admitted without objection. Applicant offered Exhibits (AE) A through L, which were admitted without objection. Applicant testified. DOHA received the transcript of the hearing (Tr.) on April 26, 2016. The record was left open for Applicant to submit additional exhibits. On May 2, 2016, Applicant presented additional exhibits marked AE M through AE O. Department Counsel had no objections to AE M through AE O and they were admitted. The record then closed.

Findings of Fact

Applicant is a 59-year-old employee of a defense contractor. He has worked for his employer for the past six years. He served on active duty in the Air Force from 1977 to 1987 and achieved the rank of staff sergeant. He held a security clearance, without incident, during his military service. He is married and has no children. (GE 1; AE L; Tr. 16-18, 43.)

As stated in the SOR, Applicant was alleged to be indebted to the Federal government for seven Federal tax liens entered against him between 2004 and 2012, in the approximate amount of \$143,299. Additionally, he had two unresolved medical debts and a delinquent utility bill that totaled \$3,244, collectively. Applicant denied all of the SOR listed debts, with explanations. These debts are found in the credit reports entered into evidence. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact. (Answer; GE 3; GE 4; GE 5; GE 6.)

Applicant purchased a business between 1997 and 1999. It was organized as a limited liability company, and Applicant was personally liable for the company's debts. The business heavily invested in research and development of its product, despite a significant shortfall in cash-flow. He hoped that sales of the product would alleviate the company's debt, but the company continued to decline and eventually closed in 2009. As a result, the company's Federal taxes went largely unpaid between 2004 and 2012. As a result, seven Federal tax liens were filed against Applicant between 2004 and 2012. (Tr. 19-24, 37-38, 49-51.)

In 2012 Applicant hired a tax advisory company to assist him in setting up an installment plan with the Internal Revenue Service (IRS). He has been making regular monthly payments to the IRS in accordance with the established installment plan since September 2012. He has resolved six of the seven tax liens, including those alleged in SOR ¶¶ 1.a, 1.b, 1.c, 1.e, 1.f. and 1.g, and those liens have been released. He is making monthly payments of \$190 to resolve the remaining \$11,040 debt identified in SOR ¶ 1.d. (AE A; AE B; AE G; AE H; AE I; Tr. 26-29.)

Applicant experienced additional financial problems as a result of his wife leaving the work force to care for her ailing parents from 2010 to January 2016. Her father (Applicant's father-in-law), passed away in January 2016, and she immediately went back to work. (Tr. 23-25.) Her unemployment caused a decrease in their familial income. As a result, Applicant incurred additional debt including two delinquent medical debts and a delinquent utility bill. However, Applicant presented documents to show he has resolved the \$1,028 medical debt (SOR ¶ 1.h); the \$554 utility bill (SOR ¶ 1.i); and the \$1,662 medical debt (SOR ¶ 1.j). There are no additional delinquencies identified on Applicant's most recent credit report. (AE E; AE F; AE M; AE N; AE O; Tr. 23-25.)

Applicant now makes sound financial choices. He purchased a home in 2014, which decreased his monthly expenses by \$200. He and his wife drive older model vehicles. The only vacation he has taken recently was financed by his brother so that he could attend his brother's wedding. He completed a financial counseling class in March 2016. He now has approximately \$800 left at the end of the month. Additionally, his wife recently inherited property, which they intend to sell. They plan to use the proceeds of the sale to resolve the remaining tax delinquency. (AE D; AE E; AE K; 40-51.)

Applicant is well respected by those that know him. He is known by his friends and colleagues to be trustworthy and reliable. His supervisor considers him to be "a valued asset to [their] team." (AE C.)

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 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.

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 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 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, as follows:

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 describes two conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant’s delinquent debts began in 2004, when he was unable to pay Federal taxes for his company. He continued to amass \$143,299 in Federal tax liens through 2012. Additionally, he incurred two unresolved medical debts and a delinquent utility bill totaling \$3,244, collectively. The evidence raises security concerns under both of these

conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

Two Financial Considerations mitigating conditions under AG ¶ 20 are applicable:

(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.

While Applicant acted irresponsibly from 2004 to 2012 in failing to address his tax liens and other delinquent accounts, he has demonstrated that since 2012 he has worked diligently to bring his financial problems under control. Applicant sought financial guidance and counseling about how to handle the debts from a tax advisor in 2012. He also participated in recent financial counseling. He has consistently made payments on his tax debt since 2012, and has resolved all but \$11,040 of it. He also resolved the two medical debts and the delinquent utility bill. He has demonstrated a concerted effort to resolve his delinquencies over the past four years. Moreover, Applicant is incurring no additional delinquent debt of any nature. AG ¶¶ 20(c) and 20(d) apply.

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 the potentially disqualifying and mitigating conditions in light of all the 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's

financial difficulties were caused, in part, by his irresponsible choice to spend his company's available cash flow on research and development instead of paying its tax obligations in a timely fashion. Other factors beyond his control, like his wife's unemployment, also contributed to his financial difficulties. However, he is an honorable man and has diligently worked over the past several years to pay his tax debts. He has a recent history of making regular payments to the IRS under his installment agreement and he resolved his other delinquencies. It is unlikely that Applicant will incur future financial problems.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concerns. I conclude the whole-person analysis for Applicant.

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:	FOR APPLICANT
Subparagraph 1.a through 1.j:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Jennifer I. Goldstein
Administrative Judge