



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



In the matter of:)
)
) ISCR Case No. 07-15140
)
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Department Counsel
For Applicant: *Pro Se*

August 20, 2008

Decision

HEINY, Claude R., Administrative Judge:

Applicant has two delinquent debts and two unpaid tax liens totaling in excess of \$16,000. Applicant has failed to rebut or mitigate the security concerns under Guideline F, financial considerations, and Guideline E, personal conduct. Clearance is denied.

Statement of the Case

Applicant contests the Defense Department's intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on March 16, 2008, detailing security concerns under financial considerations and personal conduct.

¹ Executive Order 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On April 14, 2008, Applicant answered the SOR, and elected to have the matter decided without a hearing. Department Counsel submitted the government's case in a File of Relevant Material (FORM), dated May 30, 2008. Applicant was sent a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. The FORM was received on June 12, 2008. Applicant's response to the FORM was due 30 days after receipt of a copy of the FORM. As of August 12, 2008, no response had been received. On August 15, 2008, I was assigned the case.

Findings of Fact

In his Answer to the SOR, Applicant admitted owing the debts in ¶1a, 1b, 1c, and 1d, with explanation. He denied intentionally providing a false answer to question 27 of his security questionnaire relating to reporting of tax liens. Applicant's admissions are incorporated herein.

Applicant is a 64-year-old who has worked for a defense contractor since February 2005, and is seeking to obtain a security clearance.

Applicant acknowledged two medical debts and two tax liens totaling \$16,678. Applicant asserted he is making \$25 per month payments on one medical debt (SOR ¶ 1.b). (Item 6) He provided documentation showing he made a \$25 payment in December 2007 and a second in January 2008. The debt was \$340 when he answered the SOR. (Item 4) Applicant asserted he is making similar payments on the medical debt listed in SOR ¶ 1.c. He provided documentation showing two payments, the last occurring in January 2008. As of his response to the SOR, he had reduced the debt to \$5,807. (Item 4) This debt was incurred in 2004 when Applicant was unemployed and became ill resulting in hospitalization. There is no documentation Applicant has made additional payments on any of his debts.

Accompanying his answer to the SOR (Item 4), Applicant provided documentation that he had paid other medical debts not listed in the SOR. As of February 2008, Applicant's monthly discretionary income (gross income less monthly expenses) was \$2,000. (Item 6)

Applicant admits owing the IRS \$9,650 (SOR ¶ 1.a) and the state department of revenue \$806 (SOR ¶ 1.d). In September 2000, the IRS issued a tax lien (Item 7) and in August 1999, the state issued a tax lien. (Item 7) In August 2006, Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP). (Item 5) He answered "no" to section 27, which asked if during the previous seven years he had a lien placed against his property for failing to pay taxes or other debts. Applicant asserts he "was unaware of any tax liens appearing on [his] credit record" (Item 4) when he completed his e-QIP. He asserts he did not intentionally provide false information.

In his response to the SOR (Item 4), Applicant stated he would investigate the tax liens and arrange repayment of the debts. In February 2008, Applicant responded to written interrogatories (Item 6). At that time, Applicant stated he had talked with an IRS

agent and was told the IRS records did not show the lien. The agent stated liens do not appear after 15 years. Applicant asserts the agent stated he would provide Applicant with forms to apply for a manual release of the lien. No documentation supporting his assertions was received.

The tax liens were filed in 1999 (Item 7) less than ten years before Applicant talked with the IRS and seven years before Applicant completed his e-QIP.

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions 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 the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense 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.

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 as to obtaining 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 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 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

Revised Adjudicative (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 under agreed upon terms. Absent evidence of strong 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 so as to meet his financial obligations.

The record evidence supports a conclusion Applicant has a history of financial problems. Applicant owed approximately \$16,800 on four past due obligations including two tax liens. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶19(c), “a history of not meeting financial obligations,” apply.

Applicant's history of delinquent debt is documented in his credit report, his interview by an Office of Personnel Management (OPM) investigator, his SOR response, and his response to interrogatories. Throughout this process, he had admitted responsibility for four delinquent debts, totaling more than \$16,000. These debts are currently delinquent. He has provided insufficient documentation to show significant progress resolving these debts. He documented making four payments totaling \$100. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19 (c).

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a) – (e) 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;

(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.

Under AG ¶ 20(a), Applicant's one medical debt occurred when he was sick and hospitalized in 2004, while unemployed. Illness is not an event that is unlikely to recur. There is no showing the tax liens were not caused by sickness. The debts remain unpaid. AG ¶ 20(a) does not apply.

Under AG ¶ 20(b), Applicant experience illness and hospitalization while unemployed. His illness occurred four years ago. AG ¶ 20(b) has some applicability.

Under AG ¶ 20(c), there is no showing Applicant has attended financial classes, maintains a budget, or is paying his debts. AG ¶ 20(c) does not apply.

Under AG ¶ 20(d), Applicant asserts he is making monthly payments on two debts, but only documented making four \$25 payments in December 2006 and January 2007. No other payments are shown. Evidence of a good-faith plan is lacking. Applicant asserts he owes no past due taxes. However, he again failed to provide supporting documents. He talked with the IRS, but provided no evidence he discussed the state tax lien with state authorities. Tax liens may not appear after 15 years, but Applicant's lien is only nine years old. He has failed to show the tax liens have been released or that no tax is owed. AG ¶ 20(d) does not apply.

Personal Conduct

The Directive sets out various factors relevant to an applicant's personal conduct that may be potentially disqualifying. Paragraph 15 of the Adjudicative Guidelines (AG) states a concern where there is conduct "involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process."

Under AG ¶16(a) "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities" and AG ¶16(b) "deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative"

Applicant's false answer on his SF 86 about his tax liens tends to show questionable judgment, unreliability, and lack of trustworthiness. AG ¶16(a) and AG ¶16(b) apply.

Applicant asserts he was unaware of any tax liens and did not intentionally provide false information. Tax liens are routinely imposed only after a person is notified of the tax obligations and provided an opportunity to respond. Additionally, Applicant knew he was delinquent on almost \$6,000 of medical debt resulting from his 2004 illness and hospitalization. He failed to report his delinquent medical debt on his e-QIP does not strengthen his claim of mistake. Due to the significant nature of the debt he should have been aware of the debts when completing his e-QIP.

Because Applicant chose to have his security clearance eligibility addressed without a hearing, I am unable to give additional weight to his credibility. Applicant failed to present a good explanation as to why he did not answer the questions correctly.

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns. Mitigation could occur under AG ¶ 17(a) if a person "provides the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." Applicant has not met his burden of proving that he made good-faith efforts to correct the omissions in his security clearance application or that his efforts were prompt. I find this potentially mitigating condition does not apply.

AG ¶ 17 (c) provides mitigation where "the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment. The security clearance application in issue

was executed in August 2006, which is recent. I conclude this potentially mitigating condition does not apply.

AG ¶ 17 (f) provides mitigation where “the information was unsubstantiated or from a source of questionable reliability.” Applicant’s tax liens are substantiated by his admissions and Item 7. Also, the information was pertinent to a determination of his debts and finances. I find this mitigating factor does not apply. I also considered carefully the other potentially mitigating conditions and conclude they do not 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 the 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. His medical debts are not the type of debt that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. However, Applicant did not explain how or why the tax liens were incurred. Applicant asserts he was unaware of his tax liens and did not falsify his questionnaire. Outstanding tax liens are a type of obligations an applicant is expected to remember and report on his e-QIP.

Applicant has \$2,000 per month in discretionary income, but has shown payment of only \$100 on his debts. Paying \$100 on his outstanding obligations is insufficient to show rehabilitation, a permanent change of behavior, or the likelihood the debts will not continue. Overall, the record evidence leaves me with questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial considerations and personal conduct.

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 C: AGAINST APPLICANT

 Subparagraph 1.a: Against Applicant

 Subparagraph 1.b: Against Applicant

 Subparagraph 1.c: Against Applicant

 Subparagraph 1.d: Against Applicant

Paragraph 2, Guideline B: AGAINST APPLICANT

 Subparagraph 2.a: 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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge