



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



In the matter of: ----- SSN: ----- Applicant for Security Clearance))))))	ISCR Case No. 07-15590
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Appearances

For Government: Gregg Cervi, Esquire, Department Counsel
For Applicant: Terry L. Rector, Esquire

August 29, 2008

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on September 28, 2006. On May 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. The action was taken under 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.

Applicant requested a hearing before an Administrative Judge. I received the case assignment on July 2, 2008. DOHA issued a notice of hearing on July 16, 2008, and I convened the hearing as scheduled on August 13, 2008. The Government offered Exhibits (GE 1-4), which were received without objection. Applicant testified in his own behalf, and presented the testimony of three witnesses. He submitted Exhibit (AE A),

without objection. DOHA received the transcript on August 21, 2008. Based upon a review of the record, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated June 16, 2008, Applicant admitted the factual allegations in ¶¶ 1.e, and 1.f, of the SOR. He denied the other allegations in the SOR because the debts were paid or he had no knowledge of them. He provided additional information to support his request for eligibility for a security clearance.

Applicant is a 51-year-old employee of a defense contractor. He graduated from high school in 1975. He married in September 1976, and had one son from that marriage. Applicant served in the Air Force from 1976 until 1996. He had a top secret clearance for his entire career. He has been employed since 1998 with the same employer (GE 1).

Applicant and his wife of 32 years did not share the duties for the household finances. His wife handled the financial matters and Applicant claims he had no reason to question her management. His wife had a contract for a catering business from 1998 until 2007 (Tr. 16). Applicant and his wife had an accountant complete their personal taxes and handle the business matters for the income from the catering contract (Tr. 17).

Applicant's wife had several falls over the years. This resulted in back problems and other medical problems. In 2000, she was on various medications. She was also involved in an automobile accident in 2002 which disabled her. She still has problems today with her back. In 2002, she suffered a heart attack. She had open heart surgery in 2006. In May 2007, the couple lost their only son in an automobile accident (GE 2). In January 2008, she had another surgery (Tr. 18). She had to stop her work in the catering business in 2007. She has more back surgery scheduled.

When Applicant retired from the military in 1996, he had some difficulty in living on his retirement pension of \$13,000 per year. He and his wife had a number of credit card bills that they could not continue to pay. She acknowledged that they had too many credit cards and could not make minimum payments. They went to a credit counselor and filed for bankruptcy in 1998 (Tr. 27). They did not timely file taxes for the years 2004, 2005 and 2006. When they did file their taxes, it was a joint return (Tr. 38).

Applicant responded to DOHA interrogatories in March 2008. He addressed the items listed in the SOR by referring to his tax attorney whom he contacted in 2007. He acknowledged that the federal tax liens had not been satisfied. He explained that the federal tax returns for 2004, 2005, and 2006 were filed in August 2007 (GE 2). Applicant's wife testified at the hearing that she did not learn about the IRS tax liens until 2006. However, she knew they had tax problems from 2002 (Tr. 43). In fact, they have been paying on the 2002-2003 taxes through an installment agreement. Applicant's wife stated they obtained a credit report every year beginning in 2005 or

2006, but then did not know that the federal liens existed. The two liens appear on the 2006 credit report (GE 4). Applicant's wife at times contradicted her testimony and seemed confused and vague about the financial issues although she was adamant that she took care of the finances rather than Applicant (Tr. 41). At one point, Applicant's wife thought the first time that she spoke to the IRS about tax issues may have been 2000 or 2001 (Tr. 62).

The SOR alleges ten delinquent debts/ collection accounts including, two federal tax liens, one judgment, one unpaid medical debt and six collection accounts. The total amount of the delinquent debt is approximately \$41,335.

SOR ¶ 1.a is for a tax lien levied by the IRS in December 2004 in the amount of \$20,742. Applicant denied this debt because he paid *his* taxes and the liens were the result of his wife's taxes (despite the fact that they filed a joint tax return). At the hearing, Applicant admitted that he owed the debt. He is working with a tax attorney to resolve this matter.

SOR ¶ 1.b is for a tax lien levied by the IRS in March 2003 in the amount of \$11,457. He also denied this because he paid *his* taxes. He acknowledges that he and his wife filed a joint return but she was self-employed. He admits that he owes the debt. He is working with a tax attorney to resolve this matter.

SOR ¶ 1.c is a civil judgment granted against him in the amount of \$687. Applicant denied this debt. Applicant and his wife believe someone paid this amount but it was not either of them (Tr. 44).

SOR ¶ 1.d is for a charged-off account in the amount of \$314. Applicant believed this amount was paid to the creditor but does not have a receipt.

SOR ¶ 1.e is for a medical provider collection account in the amount of \$50. Applicant paid this bill in March 2008.

SOR ¶ 1.f is for a charged off account in 2004 for the amount of \$3,253. Applicant admits this bill. He settled this account on May 16, 2008 (AE A).

SOR ¶ 1.g is for a charged off account in the amount of \$1,060. He denied this bill. Applicant's wife does not have any knowledge of this account (Tr. 52). He called the credit collection company but he does not have any documentation that he disputed the amount (Tr. 138).

SOR ¶ 1.h. is another charged off account in the amount of \$371 for which Applicant has no knowledge. However, in his security clearance application he stated he disputed this amount and has refused to pay (GE 1).

SOR ¶ 1.i is a charged off account in the amount of \$956. Applicant does not have any knowledge of this account.

SOR ¶1.j is a charged off account in the amount of \$2,445 for a credit account. Applicant paid this bill through the use of another credit card (Tr. 160).

Applicant's current monthly net income is \$4,610, which includes his military retirement of \$13,000. After monthly expenses, he has approximately \$800. He is currently making minimum payments on other credit cards (Tr.121). He is current with his car payments. He has no bank savings. He has no idea what he has in a checking account. He detailed that he has already borrowed \$25,000 against his retirement fund (Tr.128). The \$25,000 is gone and Applicant could not account for it. He did state that he gave it to his wife and it is now gone. He has no budget.

In May 2007, Applicant and his wife obtained the services of a tax attorney to help with resolving taxes due on the catering business (Tr. 20). The tax attorney addressed the joint 2004 and 2005 federal taxes that Applicant and his wife had filed but not paid. He made an abatement request for penalties due to the medical hardships that Applicant's wife faced (Tr. 68). The tax attorney explained that since Applicant was an employee his taxes were regularly deducted from his pay. However, his wife had a 1099 but did not make estimated tax payments. The IRS has not responded to the request (Tr. 69). Due to their son's death in 2007, Applicant and his wife did not file the 2006 return. They did file the 2007 return and their refund of \$3,150 was applied to the old taxes. They now voluntarily send the IRS money (Tr. 71). The tax attorney advised Applicant and his wife that their former accountant should have deducted expenses and that the tax owed is artificially high. The tax attorney had no knowledge of the two federal tax liens (Tr. 76).

When Applicant completed his security application in 2006, he checked on his credit report and saw that two liens from the IRS were listed against his property. He did not know they existed before this. However, he did know that they owed taxes to the federal government from 2003 and were paying on them (Tr. 95). Applicant discussed the liens with his wife and learned that she had not filed the 2006 taxes (Tr. 97). Applicant submitted his tax returns for 2005 and 2006 as part of his response to interrogatories. He listed gambling losses on both income tax returns for \$3,069 and for \$10,416 respectively (Tr. 148).

Applicant was vague and unsure about many of the financial issues at the hearing. He was not certain about the first year that they failed to pay the IRS taxes due. He testified that he assumed his wife was taking care of everything and making installment payments to the IRS. He did not bring any tax documents to the hearing and did not bring any correspondence from the IRS to the hearing. He relied on the tax attorney. The tax attorney did not know about the tax liens that were listed in the SOR. Applicant admitted that he briefly looked at the documents that the Government had sent him for the case. He acknowledged that in 2006, his earnings were \$116,611. Applicant acknowledged that his total debt is \$174,000 including his mortgage and car payments, including the debts in the SOR. He could not explain what if any amount they had in their checking account. He does not have a savings account. He does have his retirement account (\$59,000) but he borrowed \$25,000 against it in January 2008 (Tr.

128). He was not clear about how the money was applied. Except for some legal fees and one \$3,500 debt, he recalls giving the money to his wife (Tr. 130).

Applicant's military career spanned more than 20 years. His supervisor testified that he has known Applicant for 30 years. They were in the Air Force together. He hired Applicant and notes that he has never compromised security. He handles classified information properly and is a person of trust. He believes that the financial situation is not affecting Applicant's work performance or ability to handle classified information.

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, 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

The security concern relating to the guideline 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(a), an inability or unwillingness to satisfy debts⁶ is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations⁶ may raise security concerns. Applicant has delinquent debts and two tax liens, judgments and could not meet his financial obligations from 2002-2007. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying conditions may be mitigated where 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.⁶ Applicant's financial worries are partially the result of his wife's business tax not being paid. However, they always filed a joint return. He still has unresolved tax debts and collection accounts. This potentially mitigating condition does not apply.

Under AG & 20(b), it may be mitigating where 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.⁶ As noted above, his financial problems may have begun with his wife's illness and business tax problems but the inquiry does not end there. The tragedy of their only son's death in 2007 is not overlooked or minimized. But many of the financial problems were in place before 2007.

Applicant did not act responsibly in identifying and resolving these debts. He did not take a stance when he learned about the tax issues. I find this potentially mitigating condition does not apply.

Evidence that 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 is potentially mitigating under AG & 20(c). This does not apply. Applicant has no budget and has had no financial counseling. He is paying one debt with a loan from a credit card. He does not have a handle on his financial affairs. His contact in 2007 with the tax attorney and his position that the problem is his wife's tax not his is irresponsible. He took out a loan of \$25,000 against his retirement account and gave it to his wife. He is not able to account for the money.

AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant's problems were caused by an inattention to his financial affairs. He and his wife did start making installment payments to the IRS a few years ago but have not resolved the liens or put any plan into action. They did not seek the help of a tax attorney until 2007. He did not actively pursue any of the credit collection accounts. I conclude this potentially mitigating condition partially applies.

AG ¶ 20(e) applies where the evidence shows "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." In this case, Applicant stated that the alleged debts were his wife's but he understands that legally he is responsible for them through the marriage. He did not have knowledge of many of them. I conclude this potentially mitigating condition does 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) 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 common sense 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 and conclude that under the whole person, there is sufficient mitigation to overcome the government's case.

Applicant retired from the Air Force after 20 years of service. He has held a top secret clearance during his military career and his defense contract career. He has the recommendation of his supervisor. His supervisor is aware of his financial issue and believes it has not affected Applicant's work in any way. He praised Applicant for his capability and work knowledge. He has known Applicant for 30 years in a professional and a personal capacity and has no reservations about recommending him.

Applicant had some financial difficulties when he retired from the military. He received a military pension and found employment but had outstanding credit card debt that he could not pay. His wife had worked with a contract for a catering business. But she had many medical problems over the years, including many surgeries. Her tax accountant did not take legitimate business deductions and Applicant did not pay estimated taxes. She owed taxes and was not able to pay them. She could not work after 2007. However, Applicant and his wife filed joint tax returns.

Applicant and his wife suffered a great tragedy with the sudden death of their only son in 2007. However, the financial issues arose prior to this tragedy. Applicant's reliance on the fact that his wife handled all the financial affairs does not absolve him in this matter. His wife did not pay taxes and Applicant is responsible as well. He knew about an installment arrangement for the IRS but did not take an active stance to resolve or alleviate problems. He and his wife used credit and did not plan or budget. Applicant recently took out a hardship loan against his retirement fund. He does not know where all the money went. He and his wife have been making payments on the taxes but were not sure of the status. They hired a tax attorney in 2007 but he is not fully aware of Applicant's tax situation.

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 Applicant has not 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, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant

Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

NOREEN A. LYNCH
Administrative Judge