



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



In the matter of:)
)
) ISCR Case No. 07-17850
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: Emilio Jaksetic, Esquire, Department Counsel
For Applicant: *Pro se*

August 20, 2008

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA), on August 21, 2006. On January 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted his answer to the SOR on February 15, 2008. DOHA issued a notice of hearing on April 9, 2008, and the hearing was held on June 13, 2008. At the hearing, four exhibits (GE 1 through 4) were admitted in evidence without objection to support the government’s case. Applicant’s 12 exhibits (AE A through AE L) were

received in evidence without objection. He also testified. DOHA received the transcript on June 23, 2008.

Findings of Fact

The SOR identifies three federal tax liens and two state tax liens. The federal liens total approximately \$24,000.00 and the state liens amount to about \$2,500.00. The liens were filed after Applicant failed to pay taxes for certain tax years identified in AE E. Applicant admitted the five allegations under the financial considerations guideline of the SOR. Applicant is 45 years old and single. He has been working for his current employer since August 2005. He is employed as a K-9 assistant. He did not recall being unemployed during his working career.

Applicant received his Bachelor's degree from college in 1987. He was a policeman for several years, then a car salesman in State X. Applicant testified he was divorced in 1997 (Tr. 23),¹ and ordered to pay child support. Though the record is not clear about the date of the divorce and when his wife relocated, at some point after the divorce, his wife moved with the children to the local area in State Y.

Applicant moved from State X to the local area in 2005 to be closer to his three children. He worked for one company for about a year and a half, before hiring on with his current employer in August 2005.

Between 1999 and 2004, Applicant was contributing to the support of his daughter's educational costs for college. According to Applicant, low paying jobs and not having enough money were reasons he could not pay his taxes. To receive more money in his paycheck, Applicant claimed five exemptions although he had only three children. He made the decision to claim more exemptions after his coworkers told him this would increase his take home pay. Even before the liens were filed against him, Applicant recalled receiving notices from the Internal Revenue Service (IRS) and the counterpart agency in State X requesting him to pay the delinquent taxes. Applicant's W-2 earning form for 2007 shows that he claimed one federal exemption (himself) and three state exemptions. (AE C) When asked why he declared three exemptions in his W-2 form for the state, he stated:

Initially, it was just like for the federal. I was claiming high exemptions because I could get more money back. For the State of [Y], the years that I've been here, I've always got a return with three exemptions and I just hadn't changed it. (Tr. 83)

In 2003, Applicant collaborated with an accountant to prepare his taxes for that year. The first time he sought help for his federal and state tax problems occurred in October 2007. He paid a tax relief organization more than \$2000.00 in late 2007 and

¹ However, GE 1 (security clearance application (SCA)) indicates he was married in 1997, and separated in 2005.

early 2008 to arrange a settlement with the IRS. However, the terms of the settlement are not in the record. AE E is the first page of correspondence from the IRS dated February 13, 2008. Subsequent pages of the letter appear to be missing. The first page indicates that the first \$500.00 payment to the IRS was to be made on March 28, 2008, with \$500.00 payments monthly thereafter until the lien was paid. Applicant has documented proof of five payments to the IRS, and is confident he will have the federal debt paid in the spring of 2009. He claims he has paid \$16,000.00 toward the resolution of the liens. No documentation was presented in support of his claim. The documentation in the record shows Applicant paid about \$2,000.00 to the tax relief organization, \$2,500.00 to the IRS in first five months of 2008, and \$3,200.00 to the IRS in the form of a refund for 2007 that was impounded by the IRS. Applicant still owes State X about \$2,500.00, and has a tax preparer assisting him with the state taxes, but supplied no documentation of an agreement to repay State X. (AE C) GE 3 reflects Applicant resolved a state tax lien of \$613.00 in March 2007.

Applicant provided no evidence concerning his job performance. Other than the evidence about his former marriage (which ended in divorce) and his child support, the only evidence he presented about his lifestyle is the Selective Service information, and the criminal form showing that a misdemeanor case was dismissed because he had completed the requirements imposed during the pre-trial phase of his case in 2003. About three months ago, he began a part-time job as a doorman at a restaurant earning about \$250.00 every two weeks.

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 flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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 ¶ 2b. 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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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.

Analysis

Financial Considerations (FC)

18. *The Concern.* “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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.”

The SOR identifies five federal and state tax liens filed against Applicant between 2001 and July 2007. Applicant stopped paying his taxes from the late 1990s to about 2005, when he moved to the local area. As a result, more than \$26,000.00 in federal and state tax liens have been filed against him. The government has established its case under the financial FC disqualifying condition (DC) 19.a. (*inability or unwillingness to satisfy debts*), FC DC 19.c. (*a history of not meeting financial obligations*), and FC DC 19.f. (*failure to file annual Federal, state or local income tax returns as required or the fraudulent filing of same*). The good judgment Applicant exercised in at least filing his tax returns is subverted by the intentionally dishonest conduct in claiming five exemptions so he could bring home a larger paycheck during the year, and still not pay his taxes at the end of the year. Applicant knew that misrepresenting his exemptions was wrong. He also knew he should have paid his taxes.

There are five mitigating conditions (MC) that are potentially applicable to the circumstances. They are: FC MC 20.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); FC MC 20.b. (the conditions that resulted in the financial problems were largely beyond the person's control, and the individual acted reasonably under the circumstances); FC MC 20.c. (the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is resolved or under control); FC MC 20.d. (the individual initiated a good-faith effort to repay creditors or otherwise resolve debts); and, FC MC 20.e. (the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause or of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue). FC MC 20.a. does not apply. Had Applicant's dishonest conduct ended in 2005, then his favorable evidence of payments since October 2007 (to the tax negotiator and the IRS) to eliminate the tax liens may have been sufficient to overcome his failure to pay taxes for the lengthy period of time set forth in the SOR. However, Applicant is still claiming an incorrect number of exemptions in State Y, a different state. Though the incorrect number of exemptions could have occurred unintentionally or by oversight, that is not the most reasonable explanation given Applicant's record for not declaring proper exemptions in the past, and, in not paying his taxes. Someone had to inform the tax authority in State Y of the number exemptions to initially declare.

Applicant gains no benefit from FC MC 20.b. as low paying jobs do not mitigate the failure to pay taxes. Providing financial assistance to his daughter so she could obtain her college degree was a commendable act by Applicant. But, his assistance does not excuse his failure to pay taxes. Applicant has presented no evidence to suggest that his federal and state tax problems resulted from unforeseen events.

Applicant receives limited mitigation under FC MC 20.c. and FC MC 20.d. Though he has had no counseling, he has a five-month record of paying off the federal tax lien. He also paid the state tax lien in March 2007. The evidence of payment is insufficient to meet Applicant's ultimate burden of persuasion under the FC guideline.

Whole Person Concept (WPC)

The AG indicates the ultimate determination of whether to grant a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and whole person concept. The WPC is made of nine general policy factors:

- (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 the participation is voluntary;
- (6) the presence or absence of rehabilitation and other 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.

At the age of 35 or 36, Applicant decided to inflate his exemptions and not pay his taxes for a significant period of time. This course of conduct was not isolated. Rather, it occurred from the late 1990s to about 2005. The record shows that even after he moved to the local area in State Y, he continued to inflate his state exemptions as substantiated by his W-2 form for 2007. (AE C) While Applicant is congratulated for finally hiring a tax relief agency to negotiate a repayment plan with the IRS, and then developing a short track record of payment, he is still engaged in a practice that resulted in owing the IRS and State X tax agency more than \$26,000.00. The false state exemptions, which were the primary reason for Applicant's previous inability to pay his taxes, raise ongoing credibility issues in Applicant's overall case in mitigation. These credibility issues cannot be overlooked or excused. Accordingly, the FC guideline is found against 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 (Financial Considerations, Guideline F): AGAINST APPLICANT

Subparagraph 1.a.	Against Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	Against Applicant
Subparagraph 1.d.	Against Applicant
Subparagraph 1.e.	Against 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.

Paul J. Mason
Administrative Judge