



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



In the matter of:)
)
-----) ISCR Case No. 08-02679
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Esq., Department Counsel
For Applicant: *Pro se*

November 8, 2010

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On April 13, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In a response dated May 3, 2010, Applicant admitted all 10 allegations raised under Guideline F and requested an administrative determination. On July 23, 2010, Department Counsel submitted a File of Relevant Material (FORM), which included nine attached items. Applicant did not submit any response or information within the time period of 30 days after his receipt of the FORM. The case was assigned to me on November 2, 2010. Based on a review of the case file, submissions, and exhibits, I find Applicant failed to meet his burden regarding the security concerns raised. Security clearance denied.

Findings of Fact

Applicant is a 56-year-old aviation instructor/controller who has worked for the same defense contractor since 2003. He served in the United States military from 1972 until 1992. He is a divorced father of two adult children and one minor child.

In responding to the SOR, Applicant provided scant information regarding his personal life and finances. He admitted without explanation that his wages at a former employer were garnished in about 2002 for approximately \$8,400 in favor of the Internal Revenue Service (IRS) because he had failed to pay voluntarily (SOR allegation ¶ 1.a); that he failed to file his Federal income tax returns for the tax years 2003-2008, as required (SOR allegations ¶¶ 1.b-1.g); that he is indebted to the IRS for tax year 2003 in the approximate amount of \$4,259 and that the debt remained unpaid as of the April 13, 2010, SOR (SOR allegation ¶ 1.h); that he is indebted to the IRS for tax year 2004 in the approximate amount of \$13,983 and that the debt remained unpaid as of the April 13, 2010, SOR (SOR allegation ¶ 1.i); and that he is indebted to the IRS for tax year 2005 in the approximate amount of \$13,575 and that the debt remained unpaid as of the April 13, 2010, SOR (SOR allegation ¶ 1.j).¹

During a November 2007 interview regarding his security clearance application (SCA), Applicant admitted that he had not filed Federal tax returns for tax years 2003-2006. He claimed that the military had not supplied him with W-2 forms for his military retirement pay since 2003, but said he was addressing that issue by updating his contact information with the military payment system and that he hoped “to complete the appropriate filing as soon as possible.”² No evidence of any attempts to rectify this situation were submitted.

In June 2008, in response to DOHA interrogatories, Applicant noted that he was getting divorced from the spouse listed in his June 2005 security clearance application (SCA), and he provided the name of a child born abroad in 2006. He admitted he still had not filed his Federal tax returns for tax years 2003-2006. He stated that he would file his taxes “after I get my daughter’s Birth abroad paperwork with SN # [sic].”³

In November 2009, in response to another set of DOHA interrogatories, Applicant again admitted that he had not filed the Federal tax returns at issue. He also admitted that he had failed to file Federal tax returns for 2007 and 2008.⁴ He stated that he was “waiting on some information back from the IRS that I requested so I can file all

¹ Regarding the approximately \$31,817 in Federal tax liability incurred for tax years 2002-2005, the IRS prepared substitute tax returns for Applicant. The IRS computed his tax debt based on the substitute forms, plus interest and penalties assessed. See FORM, Item 9 at 2, 5, and 8. There is no indication whether Applicant owes additional taxes for tax years after 2005.

² FORM, Item 6 at 6.

³ FORM, Item 7 at 5.

⁴ FORM, Item 8 at 2-4.

of my tax years and I am waiting for my daughter's SSN # [sic]."⁵ Applicant did not explain his continued delay in addressing any of these issues in his May 2010 response to the SOR.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. The AG lists potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's over-arching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The United States Government (Government) must present evidence to establish controverted facts alleged in the SOR. It is an applicant's responsibility to present "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ."⁶ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.⁷

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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

⁵ FORM, Item 8 at 5.

⁶ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁷ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

applicant concerned.”⁸ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.¹⁰ A security clearance denial does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

In this case, Guideline F is the appropriate guideline for consideration. Under that guideline, “failure or an 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.”¹¹ It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”¹² Here, Applicant admitted that he owes and has owed the IRS an amount of approximately \$31,817 for several years. He admitted his wages were garnished in 2002 for approximately \$8,400 for payment to the IRS. He also admitted he failed to file Federal tax returns for tax years 2003 through 2008. Therefore, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), FC DC AG ¶ 19(c) (a history of not meeting financial obligations), and FC DC AG ¶ 19(g) (failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant failed to file Federal tax returns for tax year 2003, a pattern that continued through, at least, tax year 2008. There is no evidence this matter has been addressed. Applicant has not noted any continuing difficulties in updating his contact information with the military’s payment system or in receiving his W-2 forms from the military; he has not explained his delays in obtaining a Social Security number for a child born in 2006; and has not provided a recent explanation for his continued delays in addressing the admitted SOR allegations. Financial Considerations Mitigating Condition (FC MC) AG ¶ 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) does not apply.

⁸ See also EO 12968, § 3.1(b) and EO 10865 § 7.

⁹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹⁰ *Id.*

¹¹ AG ¶ 18.

¹² *Id.*

Since November 2007, Applicant has not noted any further difficulties in maintaining contact with the military pay system that might have protracted his ability to receive W-2 forms or submit overdue tax returns. While Applicant may have had difficulty obtaining a Social Security number for a child born in 2006, Applicant failed to explain and document why that difficulty continued for several years. Moreover, while Applicant may have divorced within the past few years, no information was provided indicating it adversely impacted his ability to file or pay his Federal tax returns. Therefore, Financial Considerations Mitigating Condition AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply.

There is no evidence Applicant has sought financial counseling or addressed his issues with the IRS, obviating application of FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control). Moreover, there is no evidence that Applicant has either paid or disputed the calculated tax liability for tax years 2003-2005, or attempted to file Federal tax returns for the remaining tax years at issue. Therefore, FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Given the limited facts provided, none of the other FC MCs apply.

The burden for mitigation in these proceedings is placed squarely on Applicant. Lacking any evidence that he has made any progress on addressing any of the allegations noted in the SOR, financial considerations security concerns remain unmitigated.

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 an applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the "whole-person" factors.¹³ Applicant is a mature man who served in the U.S. military for 20 years. He has

¹³ Examination of the "whole-person" in this matter is limited due to Applicant's failure to supplement the record with more personal information that might be relevant and material to this case.

raised two children and is currently raising his minor child. He has been continuously employed with the same employer for seven years.

Although no documentary evidence was ever offered, Applicant stated that his delays in filing Federal tax returns between, at least, 2003 and 2005, were based in part on difficulty in obtaining W-2 forms from the military due to its not having current contact information for him. In 2008, he claimed his delays were based on difficulties in obtaining a Social Security number for a daughter born abroad in 2006. In November 2009, he stated that after three years, he was still having problems getting the child's Social Security number, while also claiming he was awaiting some unidentified information from the IRS. In May 2010, in response to the FORM, he admitted the allegations without comment. He did not timely respond to the July 23, 2010, FORM with any additional information. Consequently, there is no explanation as to why these issues remain unaddressed.

As noted, with multiple disqualifying conditions raised, Applicant has the burden of raising mitigating conditions that would mitigate the financial considerations security concerns raised. Applicant provided insufficient information that might tend to mitigate those concerns. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. As noted above, any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information. In light of the foregoing, security concerns remain unmitigated. Clearance denied.

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
Subparagraphs 1.a-1.j:	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 access to classified information. Clearance denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge