



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



In re:)
)
-----) ISCR Case No. 08-05701
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro Se*

October 29, 2009

Decision

HOWE, Philip S., Administrative Judge:

On October 10, 2007, Applicant submitted his Security Clearance Application (SF 86). On February 20, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns 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 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 answered the SOR in writing on March 10, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 2, 2009, and I received the case assignment on June 5, 2009. DOHA issued a Notice of Hearing on July 9, 2009, and I convened the hearing as scheduled on July 30, 2009. The Government offered Exhibits 1 through 8, which were received without objection, except for Exhibits 5 to 8. Applicant objected to their admission, and I denied

his objections, admitting these documents into evidence. Applicant testified and submitted Exhibits A through E, without objection. DOHA received the transcript of the hearing (Tr.) on August 7, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a. He denied the factual allegations in ¶¶ 1.b and 1.c of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 63 years old and married to his present wife for 20 years. He has two adult children from his first marriage, which ended in divorce in 1989. He has a master's degree in industrial engineering administration. He works for a defense contractor. (Tr. 23, 25, 26, 41, 50; Exhibit 1)

Applicant separated from his first wife in 1985. He received custody of their two children, who were nine and six years old at the time. He was divorced in 1989. Applicant worked on a contractual basis for various companies during the 1980s, and was responsible for paying his own federal withholding taxes. In the tax years 1988 and 1989 he failed to have sufficient withholding taxes taken. Applicant also claimed his income in that time period was spent on child care for his minor children and living expenses, so he did not have sufficient money to pay his federal taxes. The Internal Revenue Service (IRS) filed tax liens in 1995 for \$260 and in 1997 for \$68,754.49 against Applicant. He did nothing for several years to resolve these liens, complaining that the IRS would not speak with him about the liens. Finally, he found a tax relief service over the internet and paid them \$5,400 to resolve his tax liens. He contracted with this service in 2004. They stopped the IRS from continuing to take his tax refunds each year. This tax service did nothing beyond that work for their fee. Applicant has received his tax refunds since 2005. While the tax refunds were taken, Applicant estimates that he paid the IRS about \$20,000 through that process. (Tr. 28-36, 43; Exhibits 2-8)

Applicant retained an attorney in 2009 and obtained the IRS tax lien releases. He filed them with the appropriate county official in June 2009. Both liens were released by the IRS. These tax debts are resolved. (Tr. 37; Exhibits A to E)

As a result of his separation from his first wife and her failure to pay debts for which he gave her money, Applicant filed a Chapter 7 bankruptcy in December 1985. He was discharged in bankruptcy in November 1986. Since then, his credit reports show Applicant has regularly paid his financial obligations. (Tr. 46; Exhibits 5, 6, C-E)

Applicant had a security clearance when he served in the military services from 1967 to 1971. Applicant did not report any security violations during that time period. (Tr. 24; Exhibit 1)

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 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. 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 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.

AG ¶ 19 describes nine conditions that could raise a security concern and may be disqualifying. Of these nine conditions, three potentially apply to the facts in this case:

(a) inability or unwillingness to satisfy debts;

(c) a history of not meeting financial obligations; and

(d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust.

Applicant accumulated significant tax liabilities for 1988 and 1989 because he did not have sufficient money withheld from his contractual employment payments. The IRS filed tax liens to enforce payment of the tax liabilities. Applicant did nothing to resolve these tax liabilities until 2004 when he hired a tax resolution company he found on the internet. AG ¶ 19(a) and AG ¶ (c) apply.

Applicant evaded paying the correct amount of income tax from his contractual income in 1988 and 1989 because he thought he needed the money to pay for child care for his children. By doing so, he committed income tax evasion. AG ¶ 19 (d) applies. The evidence is sufficient to raise these potentially disqualifying conditions,.

The guideline AG ¶ 20 provides six conditions that could mitigate security concerns. Three conditions may apply:

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The Applicant's income tax problems and Chapter 7 bankruptcy arose in 1985 when he separated and subsequently divorced his first wife. He obtained custody of his two minor children, necessitating child care expenses until he remarried in 1990. These circumstances are no longer extant, being one-time occurrences in Applicant's life. Since then, he has regularly paid his debts and taxes. I find that the behavior occurred under such unusual circumstances that it is unlikely to recur, and it does not raise concerns about his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) applies.

AG ¶ 20(b) applies. The divorce Applicant sought from his wife caused the financial problems at issue in this case. His former wife did not pay certain debts for which Applicant gave her money. Finally, he decided to file Chapter 7 bankruptcy. He acted responsibly in identifying and resolving these debts in that way. Then, Applicant's income tax problems arose because he had custody of his two children during and after the divorce. While he worked daily, he paid a child care service to watch his children when they were not in school. He resolved his tax problems when the IRS took his income tax return money from tax years 1990 through 2005, being about \$20,000. He retained a tax resolution company in 2004, after doing nothing directly to resolve the tax debts between 1990 and 2004. Applicant may have sought to negotiate with the IRS, but was not successful because the IRS did not want to deal with him. His belligerent attitude about the problem shown at the hearing may have played a part in preventing any fruitful negotiations. However, he acted responsibly by filing bankruptcy on his debts, and then retaining a tax resolution firm and an attorney to resolve his tax issues. Both these financial problems resulted from his divorce.

AG ¶ 20(d) applies if Applicant actively tried to resolve his debts. He did not do anything proactively for over a decade about resolving the tax debts, but instead allowed the IRS to take his tax refunds for the years 1990 to 2005. Apparently that money was sufficient to resolve his tax liabilities and to allow the IRS to issue a Release of Tax Liens in June 2009. Based on those documents, the tax debts are paid. I conclude these potentially mitigating conditions 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Applicant was a married adult when the debts and tax liens arose in the 1980s. He voluntarily decided to reduce his tax withholding in 1988 and 1989 in order to increase his monthly income, from which he paid for family expenses. These events occurred 20 years ago and have not been repeated. He regularly pays his taxes and debts, and has since then. There is no likelihood for recurrence of this activity because his children are now adults and his income is sufficient to support himself and his present wife. His Chapter 7 bankruptcy resolved his other debts in 1987, and has not been repeated. Applicant's financial situation in the 1980s was a unique event. It does not cast any doubt on his current trustworthiness or reliability.

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 mitigated the security concerns arising from his financial considerations. I conclude the "whole-person" concept for 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, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	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.

PHILIP S. HOWE
Administrative Judge