



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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SSN: -----) ISCR Case No. 08-06136
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Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro Se*

May 8, 2009

Decision

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings, the government’s exhibits (Gx.), Applicant’s exhibits (Ax.), and Applicant’s testimony, his request for a security clearance is denied.

On October 30, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew a security clearance required for his job with a defense contractor.¹ After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding² that it is clearly consistent with the national interest to continue Applicant’s access to classified information. On November 7, 2008, DOHA issued to Applicant a Statement of Reasons (SOR) alleging

¹ Applicant also requires a security clearance as part of his duties in the U.S. Army National Guard.

² Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

facts which raise security concerns addressed in the revised Adjudicative Guidelines (AG)³ under Guideline F (financial considerations).

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on February 23, 2009, and I convened a hearing on April 1, 2009. The parties appeared as scheduled. The government presented five exhibits (Gx. 1 - 5) included in the record without objection. Applicant testified and submitted five exhibits (Ax. A - E) admitted without objection. DOHA received the transcript of hearing (Tr.) on April 10, 2009.

Findings of Fact

The government alleged in the SOR that Applicant owes approximately \$5,075 for delinquent payments on a timeshare (SOR ¶ 1.a); that he owes approximately \$22,171 for unpaid state taxes being enforced through a lien against him (SOR ¶ 1.b); that he has not filed his state income tax returns as required for tax years 2002 through 2006 (SOR ¶ 1.c); and that he owes \$33 for a delinquent cell phone bill (SOR ¶ 1.d). In response, Applicant admitted all of the SOR allegations. In addition to the facts established through Applicant's admissions, after reviewing the pleadings, the transcript, and the parties' exhibits, I have made the following findings of relevant fact.

Applicant is 51 years old and works as a senior systems analyst for a large defense contractor. He served in the United States Air Force from December 1976 until September 1985. He has been steadily employed for most of his adult life and has lived in the same house since 1996. Applicant has held a security clearance through his military service and in connection with several defense contractor positions since about 1982. (Gx. 1)

Applicant was married from August 1978 until November 2007. He and his ex-wife actually separated in 2005. The marriage produced four children, one of whom, a 10-year-old, is still their dependent. (Gx. 1) When he and his wife separated, they agreed to a division of assets and liabilities. In relevant part, they agreed Applicant's ex-wife would make the \$150 monthly payments on a timeshare they had purchased in 2004 for \$7,000. Sometime in 2005, she stopped making the payments. In 2006, Applicant became aware that payments on the timeshare were delinquent, but he did not attempt to resolve the past due payments. After receiving interrogatories from DOHA adjudicators in May 2008, Applicant called the creditor and was told the timeshare had been sold back to the timeshare company in February 2008. It is Applicant's understanding that he has no continuing obligation for this debt. (Gx. 2; Tr. 33 - 34, 38 - 39, 55 - 56)

Applicant did not file his state tax returns on time for the 2002, 2003, 2004, 2005, and 2006 tax years. He also owes the state approximately \$22,171 for unpaid taxes,

³ The Revised Adjudicative Guidelines were approved by the President on December 29, 2005, and were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, they supercede the guidelines listed in Enclosure 2 to the Directive.

ostensibly for the same tax years. Applicant repeatedly stated that he has no excuse for not filing his taxes as required and that his actions were simply the result of procrastination. (Gx. 1; Gx. 2; Tr. 32, 50) Applicant also has relied on his belief that when his returns are all filed, the state will see he was owed a refund for each year and the tax lien will either be cancelled or will be greatly reduced. (Tr. 32 - 33) He bases this belief on conversations with friends and acquaintances with backgrounds in tax issues. He has not, however, formally consulted an accountant or a professional tax advisor. (Tr. 51 - 52)

Applicant first became aware of a tax lien against him in 2005, but has yet to make any payments on that obligation. He twice tried without success in 2006 and 2007 to contact someone in the cognizant state tax agency to discuss his situation. In December 2008, he was able to speak with someone there who told him how to file his past due tax returns. Between January and March 2009, he filed his 2003 - 2006 returns. He is still trying to file his 2002 return, but had to request a copy of his 2002 federal return before he could do so. As of the hearing, he had not yet received it. (Ax. A - D; Tr. 26 - 28, 35 - 36) Applicant was also late in filing his 2007 federal and state returns. (Ax. E; Tr. 42 - 43, 46) He has also been advised that his tax account has been credited \$4,200 based on the returns he has filed so far, but that a final accounting will not be done until all of his returns are filed. (Tr. 52 - 54)

All of Applicant's other financial obligations are current and there is no indication he has any other financial problems. However, his cash flow each month is only about \$48 after expenses, and he likely would have to use personal credit to repay whatever remains of the tax lien against him. To his credit, he has paid off the delinquent cell phone bill listed in SOR ¶ 1.d. (Gx. 2; Tr. 34, 48 - 50)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁴ and consideration of the pertinent criteria and adjudication policy in the revised Adjudicative Guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole person" concept, those factors are:

- (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.

⁴ Directive. 6.3.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under AG ¶ 18 (Guideline F - Financial Considerations).

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁶

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Thus, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.⁷

Analysis

Financial Considerations.

The security concern about Applicant's finances, as stated in AG ¶ 18, is that

[f]ailure 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 government presented sufficient information to support the allegations in SOR ¶ 1.a - 1,d; that is, that Applicant was at least partially responsible for a \$5,075 debt on a repossessed timeshare and that he owes \$22,171 for a state tax lien. The

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

government's information also showed that Applicant failed to file his state tax returns as required between 2002 and 2006. At hearing, it was further established that he was late in filing his state and federal returns for 2007. Finally, it was also established that Applicant owed \$33 for a delinquent cell phone account. He has paid the cell phone bill (SOR ¶ 1.d). It also may be reasonable to conclude that he is under no continuing obligation in connection with the timeshare (SOR ¶ 1.a). However, Applicant has only recently begun to take steps to resolve his tax obligations, despite being aware of the tax lien since 2005 and despite being asked about his tax filing status at least twice during his background investigation. The fact he disclosed his non-filing when he submitted his e-QIP shows he was aware more than 18 months ago that he was delinquent on his tax reporting obligations. The foregoing requires application of the disqualifying conditions listed at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*), AG ¶ 19(c) (*a history of not meeting financial obligations*), and AG ¶ 19(g) (*failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same*).

Applicant's response to the government's information showed that he has filed most of the tax returns at issue, but that he only acted to do so after being issued the SOR. He also admitted being late on his 2007 returns and cannot show that the lien against him will be resolved once his delinquent filings are submitted. Available information does not support application of any of the mitigating conditions listed under AG ¶ 20. To the contrary, the information presented shows that Applicant still suffers from the same procrastination that caused his difficulties. While he is otherwise financially current, it will be difficult for him to pay the tax lien against him should there be no significant reduction in that obligation after his returns are filed. On balance, he has not mitigated the security concerns about his finances.

Whole Person Concept.

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guideline F. I have also reviewed the record before me in the context of the whole person factors listed in AG ¶ 2(a). Available information portrays Applicant as a mature and, save for his failure to file his taxes, responsible 51-year-old defense contractor employee. He has been steadily employed since 1976 in both the military and the private sectors. At his hearing, he was credible in his testimony and took full responsibility for his actions. However, at this time, a fair and commonsense evaluation of this record shows that the security concerns raised by Applicant's failure to meet his tax obligations and the resulting financial problems have not been mitigated. Accordingly, doubts remain as to Applicant's judgment and reliability. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government.⁸

⁸ See footnote 7, *supra*.

Formal Findings

Formal findings 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:	For Applicant
Subparagraph 1.b - 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to grant Applicant's request for continued access to classified information. Request for security clearance is denied.

MATTHEW E. MALONE
Administrative Judge