



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



In the matter of:)	
)	
)	ISCR Case No. 09-00798
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tom Coale, Esq., Department Counsel
For Applicant: *Pro Se*

July 29, 2009

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

On March 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to 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 April 16, 2009, and elected to have his case decided on the written record. Department Counsel submitted the Government’s file of relevant material (FORM) on May 19, 2009. Applicant received the FORM on May

27, 2009. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM and submitted additional material dated June 19, 2009. Department Counsel did not object. The case was assigned to me on June 25, 2009.

Findings of Fact

Applicant admitted the allegation in SOR ¶ 1.b and denied the allegation in ¶ 1.a. After a thorough and careful review of the pleadings, exhibits, and statements submitted, I make the following findings of fact.

Applicant is 65 years old and has been employed by a defense contractor since November 2005. He was unemployed from February 2005 until November 2005. Prior to then, he was employed from 1998 to 2005 for a private company. Applicant is a college graduate. He was married in 1964 and lists that he was divorced in 2004. However, he also lists that he remarried in 1997, which would be prior to his divorce.¹

There are two debts listed in the SOR. Applicant disputes a debt owed in SOR ¶ 1.a to a telephone company (\$189) that is now in collection status. He was unhappy with the telephone service and terminated the contract. Although he states in his answer to the SOR that he has provided correspondence to the company advising them of the dispute, he failed to include this documentation to substantiate his claim. He stated it is a matter of principle that he has not paid his account. He disputed the debt on his credit report.²

Applicant admitted he owed the Internal Revenue Service (IRS) \$664,401.23 for a tax lien. It appears the tax lien is for liabilities for tax years 1982 through 1994 and other federal taxes for tax years 1995, 1996 and 2001. Applicant stated that the tax liens were for “penalties and interest that were greater than any actual tax due and were the result of a period of self-employment.”³

Applicant entered into an Offer in Compromise (OIC) with the IRS in August 2004. He claimed that the debt was reduced in accordance with the OIC to \$63,179. He was to pay \$10,000 within 90 days and then pay \$1,829.47 a month for 40 months. Applicant lost his job in February 2005 and ceased making payments in July 2005. Applicant provided statements from the IRS, which indicated that a refund was owed to him for tax year 2007. That refund was applied to back taxes owed by Applicant for tax years 1996 (\$926) and 2001 (\$518.78). Applicant stated in his answer to the SOR the following: “IRS has applied refunds to the amount due and shows me to owe \$4,478.42

¹ Item 4. Applicant may have incorrectly listed the requested information on his Security Clearance Application. I am unable to determine the accuracy of these dates. I have not considered this information for disqualifying purposes.

² Item 3.

³ Item 3.

as of April 21, 2008.”⁴ However, according to the documents submitted by Applicant from the IRS, this is the balance owed for tax year 1996 and does not represent the entirety of Applicant’s unpaid balance owed to the IRS.

Applicant notes in his answer that he filed his 2008 taxes and was due a refund of \$645 that was to be applied to his outstanding tax lien. He also stated that “all tax returns have been filed on a timely basis for several years.” It is unclear whether Applicant filed his tax returns on time for the tax years he failed to pay his taxes. No explanation was provided as to why he failed to pay his taxes on time for a period of 16 tax years.

Applicant provided four documents titled: Certificate of Release of Federal Tax Lien dated June 5, 2009, that lists the place of filing as two different counties in his state. It appears the \$664,401.23 tax lien is released.⁵ Applicant did not provide an explanation as to what actions he took to obtain the release. If he paid the delinquent amount, he did not explain how much he paid, when he paid it, or how he obtained the funds to pay it.

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(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.

⁴ Item 3.

⁵ Item 8.

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. I have considered all of them under AG ¶ 19 and especially considered the following:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and

Applicant had a \$664,401.23 federal tax lien entered against him in September 1996. He provided no information that he attempted to take any action on this lien until

2004, when he entered an OIC. He provided no explanation as to why he failed to pay his taxes for 16 tax years. Applicant also had a debt to a telephone company that is in collection status. I find both of the above disqualifying conditions have been raised by the evidence.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and especially considered the following:

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

Applicant had a federal tax lien for \$664,401.23 owed for 16 tax years. Apparently, he failed to pay income tax. He offered no explanation as to why he failed to pay his taxes for a period of 16 tax years. He did not enter into an agreement with the IRS to settle his tax debts until 2004 when he entered into an OIC. He lost his job and stopped paying the OIC. He failed to provide information as to what the status of the OIC was after he stopped paying the monthly payments he promised to pay. He provided a certificate of release of the tax lien dated June 5, 2009, but failed to provide any information as to how he obtained the release. There is no evidence as to how much he may have paid on the remaining debt or what transpired after he stopped paying on it. In addition, no information or explanation was provided as to where he obtained the money to pay the debt.

Applicant's failure to pay his federal income taxes for a period of 16 tax years is a serious security concern. He recently received a release of lien, but failed to provide an explanation as to what actions he took to obtain the release. His repeated failure to pay

his taxes casts doubt on his reliability, trustworthiness and judgment. I find mitigating condition (a) does not apply. Applicant provided no explanation or evidence to show that there were conditions beyond his control regarding his delinquent taxes or that he acted in good faith to resolve them. Applicant did not obtain an OIC until 2004. His delinquent taxes were for a period of 16 tax years beginning in 1982. I find mitigating condition (b) does not apply.

Applicant did not provide evidence he received financial counseling. It appears that, with the release of the tax lien, the largest debt alleged is satisfied and his financial problems are under control. I find mitigating condition (c) applies.

Applicant did not pay his taxes for a period of 16 tax years. He did not work out a settlement with the IRS until 2004. He did not provide any explanation as to why he failed to pay his taxes on time or why he waited years to resolve his tax debts. He failed to explain how he eventually resolved his tax debt. I do not find, under the circumstances, that waiting years to pay his taxes is a good-faith effort to resolve his debts. I find mitigating condition (d) does not apply.

Applicant explained in his answer that he disputed his debt for telephone services. He terminated his contract because he was dissatisfied with the service. He did not provide any documented proof to substantiate the basis of his dispute, but did provide a copy of his credit report to show he disputed the debt and it is being investigated. Therefore, I find mitigating condition (e) partially applies.

Analysis

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 relevant 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.

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 relevant facts and circumstances surrounding this case. Applicant failed to pay his federal income taxes for tax years 1982 through 1994 and had a tax liability for tax years 1995, 1996, and 2001. He failed to provide any explanation for his failure to comply with the tax rules. In 2004, he entered into an OIC with the IRS, but due to a period of unemployment, he stopped making payments on the settlement. He failed to explain what, if any, arrangements were made with the IRS. He provided a release of tax lien dated June 5, 2009, from the IRS, but he did not explain what actions he took to obtain the release. Applicant also disputed a telephone debt. He did not provide any documentation to substantiate his dispute, but did dispute it on his credit report. Applicant did not provide enough evidence to explain the circumstances of his large tax debt or the reasons he failed to pay his taxes. Overall, the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from 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:	For Applicant
Subparagraph 1.b:	Against Applicant

Conclusion

In light of all of the relevant 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.

Carol G. Ricciardello
Administrative Judge