



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



In the matter of:)
)
) ISCR Case No. 09-03785
)
 SSN:)
)
)
 Applicant for Security Clearance)

Appearances

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

November 23, 2010

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ Applicant's clearance is denied.

On 15 January 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, Financial Considerations and E, Personal Conduct.² Applicant timely answered the SOR, requesting a hearing. DOHA assigned the case to me 12 March 2010, and I convened a hearing 29 April 2010. DOHA received the transcript 10 May 2010.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-7, and Applicant exhibits (AE) A-B (submitted post hearing).

²DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 1 September 2006.

Findings of Fact

Applicant denied the SOR allegations. He is a 42-year-old operations manager employed by a defense contractor since January 2007. He seeks to retain the security clearance he has held since at least 2001.

The SOR alleges, and government exhibits confirm, five delinquent debts totaling nearly \$56,000. However, record evidence (Answer) shows, and Department Counsel concedes (Tr. 18), that the judgment alleged in SOR 1.e. was paid within months of the judgment.³ Consequently, the four debts in dispute total just over \$38,000. Over \$37,000 of that figure is for an Internal Revenue Service (IRS) lien filed in September 2002. Applicant also remains indebted to the IRS for unpaid taxes, penalties, and interest for tax year 2003.

Applicant's financial problems began in 1995. He was self-employed that year, and did not make estimated quarterly payments to the IRS to cover his anticipated federal income tax liability for the year. Consequently, when he filed his 1995 tax return in 1996, he owed the IRS \$25,000 that he was unable to pay. Applicant claims, without documentation, to have filed several Offers-in-Compromise (OIC) over the next three years (including 1997 and 1999), each of which was denied. Applicant did not try to arrange a repayment plan because he believed his income inadequate to make payments satisfactory to the IRS (Tr. 96-101). In February 1998, the IRS assessed Applicant \$37,426 for unpaid taxes, penalties, and interest, and filed a tax lien against him for that amount in August 2002. The lien remains unresolved on Applicant's credit reports. Applicant believes, based on undocumented conversations with the IRS, that the amount owed is uncollectible as time-barred. Any payments for 1995 have been the result of IRS seizure of Applicant's income tax refunds, but Applicant has no documentation that refunds were seized for the 1995 debt. Nor has he documented that the debt is uncollectable.

Applicant also owes the IRS for tax year 2003, for which he submitted partial documentation. Applicant's Answer included a May 2008 IRS letter recalculating Applicant's 2003 tax return to reflect \$9,814.38 in taxes, late fees, and interest. The IRS continued to assess interest on his unpaid 2003 balance. In May 2009, the IRS wrote Applicant to inform him that recalculating his 2008 taxes resulted in a \$2,323.26 overpayment, which was applied to his 2003 balance, now \$8,013.95 (AE A). Similarly, in 2010, the IRS seized a \$5,135.15 overpayment, reducing the 2003 balance to \$3,182.93 (AE B). Applicant has no other plan for paying the IRS than for the IRS to continue to seize any overpayment until the 2003 balance is paid.

The remaining three debts total less than \$1,000. Applicant claims to either not recognize them or to be disputing them as paid. However, he has provided no documentation of his efforts to dispute the debts or confirm their payment.

³Accordingly, I find SOR 1.e for Applicant.

On Applicant's January 2009 clearance application (GE 1), he failed to disclose the 2002 IRS lien, which he claims to have been unaware of until 2006. He denies any intent to falsify his clearance application, claiming that he got hung up on the word "property" in the question rather than the words "lien" . . . "for failing to file taxes." As corroboration for his claim, he submitted a photocopy of the financial questions from an earlier edition of the clearance application that he used as a draft for collecting the information required by his clearance application. He answered "no" to a nearly identical lien question, but answered "yes" to a question (not on his clearance application) that asked whether he had ever failed to pay taxes when required. However, he answered both "yes" and "no" to whether he was currently delinquent on any federal debt—also not on the clearance application he was preparing. Further, he answered "no" on both forms to questions requiring him to disclose debts currently 90, or ever 180, days past due.

I find Applicant's claim of innocent mistake incredible, and his reasoning improbable. When he sat down to complete his clearance application, even with the draft in front of him, he knew he had a tax lien against him and he knew that he had past due taxes for 2003. Further, he knew in a broad sense that the government was interested in his financial condition, and disclosed no information that would put the Government on notice of his financial problems.

In January 2003, Applicant was charged with a domestic violence offense. Applicant adamantly denies the charge. However, the disposition of the offense placed him on 12 months supervised probation, and required completion of an anger-management program. According to Applicant, the program required him to acknowledge that he committed the crime, something he could not do. He was told not to return to the program. Applicant considered this to negate the requirement to complete a program, but the program reported his dismissal from the program as a violation of his probation. Applicant also moved to another state, and failed to report to his probation officer. In February 2004, a warrant for his arrest was issued. When Applicant discovered the warrant, he attempted to have it recalled, and his probation dismissed. His motion was denied in March 2006, and the warrant remains outstanding.

Applicant called no witnesses other than himself, and produced no work or character references.

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole,

the relevant adjudicative guidelines are Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their 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.⁴

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant failed to plan for his 1995 federal income tax liability, and had an initial debt of \$25,000, which he could not pay. His sole effort to address the debt was several OICs, which were denied. He made no attempt to arrange a repayment schedule.⁵ He also had a significant tax liability for 2003, that he is addressing only by having the IRS seize any income-tax refunds he may be entitled to. Although the gravamen of this case is his tax liabilities to the IRS, he also has three small debts for which he has produced no proof of dispute or resolution.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple.⁶ He produced no evidence of circumstances beyond his control, and he has not acted responsibly in addressing his debts.⁷ He has received no credit or financial counseling, nor has he demonstrated that his financial problems are under control, or that he has a plan to bring them under

⁴See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵¶ 19.(a) inability or unwillingness to satisfy debts; (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; (c) a history of not meeting financial obligations; . . . (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;

⁶¶ 20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

⁷¶ 20.(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

control.⁸ He has not made a good-faith effort to satisfy his debts.⁹ I conclude Guideline F against Applicant.

The Government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. Applicants are expected to give full and frank answers during the clearance process. Applicant's failure to disclose any information about his financial problems on his clearance application, specifically a tax lien he knew about, and his parsing of words to justify his omission, constitute a deliberate falsification or evasiveness inconsistent with the candor required of applicants.¹⁰ Applicant's submission of the draft clearance application he used to collect his financial information only highlights how deliberate his falsification was.

In addition to his falsification of his clearance application, Applicant's failure to resolve an outstanding warrant in another state demonstrates poor judgment inconsistent with access to classified information.¹¹ Applicant failed to complete the stated requirements of his probation, and failed to pursue alternate means of meeting those requirements. He made a long-distance attempt to have the warrant dismissed, but has taken no action to resolve the warrant since the attempt was unsuccessful.

None of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision. Applicant did not disclose this adverse information until his subject interview.¹² Applicant's failure to disclose this information demonstrates a lack of candor required of cleared personnel. The Government has an interest in examining all relevant and material adverse information about an applicant before making a clearance decision. The Government relies on applicants to truthfully disclose that adverse information in a timely fashion, not when they perceive disclosure to be prudent or convenient. Further, an applicant's willingness to report adverse information

⁸¶ 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;

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

¹⁰¶ 16.(a) deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

¹¹¶ 16.(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; (d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. . . ;

¹²¶ 17(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the Government relies on to perform damage assessments and limit the compromise of classified information. Similarly, Applicant's failure to resolve his outstanding warrant—and the decisions he made that caused the warrant to be issued—exemplifies his belief that he can ignore rules he perceives to be inconvenient. Applicant's conduct suggests he is willing to put his personal needs ahead of legitimate Government interests. I resolve Guideline E against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-d:	Against Applicant
Subparagraph e:	For Applicant
Paragraph 2. Guideline E:	AGAINST APPLICANT
Subparagraphs a-b:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

JOHN GRATTAN METZ, JR
Administrative Judge