



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



In the matter of:)
)
) ISCR Case No. 09-06388
)
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

December 2, 2010

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

On April 30, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. 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 Adjudicative Guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on May 10, 2010, and elected to have his case decided on the written record. Department Counsel submitted the Government’s File of Relevant Material (FORM) on August 6, 2010. The FORM was mailed to Applicant and

it was received on August 20, 2010. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM and did not submit additional material. The case was assigned to me on November 2, 2010.

Findings of Fact

Applicant admitted all of the SOR allegations with explanations. After a thorough and careful review of the pleadings, exhibits, and statements submitted, I make the following findings of fact.

Applicant is a 52-year-old employee of a federal contractor. He also owns his own business. He was married in 1978 and divorced in 1991. He has two children from the marriage, born in 1983 and 1987. He remarried in 1992 and has one child born in 1995. Applicant completed a security clearance application (SCA) on May 21, 2009.

Applicant admitted he is indebted to the Internal Revenue Service (IRS) for federal tax liens listed in SOR ¶¶ 1.a, 1.b, 1.c, 1.d, and 1.e, filed in July 2008, May 2008, July 2007, April 2005, and January 2003, totaling approximately \$175,688. In his response to the SOR, Applicant stated he is in negotiation with the IRS to satisfy the debts. He did not provide any evidence that he has paid or resolved these debts.

The debt in SOR ¶ 1.f (\$437) is for a past-due mortgage payment on a balance of \$36,106. In his answer to the SOR, Applicant stated this debt is “up to date and current.” He also stated the debt “will be paid up to date on June 10 [2010].”¹ He did not provide any documentation to support that the debt is paid or up to date.

The debt in SOR ¶ 1.g (\$3,485) is a credit card debt. Applicant admitted the debt in his answer and stated the balance owed is “\$400 and will be paid in full on June 15, [2010].” Applicant provided a document from the collection company indicating a balance of \$1,641.07 and offering to accept this amount as payment in full, if payment was received by May 28, 2010. There is a handwritten note at the bottom of the document, presumably written by Applicant, indicating that the settlement would be paid on June 15, [2010]. In his statement to the OPM investigator, Applicant denied this was his debt, claiming it belonged to his former spouse and she was responsible for it. In his answer to interrogatories, he indicated he placed a hold on the account and was paying-off the debt in installments. Applicant credit bureau report indicates that this is an “individual” account owned by him. He did not provide any documentation to support the debt is paid.²

¹ Item 4.

² Item 4, 6, 7, 8, 9.

The debts in SOR ¶¶ 1.h and 1.i (\$83 and \$309) are collection accounts. Applicant provided documentation the debts were paid on May 12, 2010, and May 17, 2010, respectively.³

Applicant did not disclose his delinquent federal income tax liens on his SCA. On August 6, 2009, Applicant was interviewed by an Office of Personnel Management (OPM) investigator. He expressed surprise and stated he had no knowledge about any of the federal taxes that were in arrears. He claimed he had a life-long problem of identity theft. He did recall that several years ago he received a notice from the IRS advising him of a large tax debt. He stated his wife contacted the IRS and resolved the issue. He advised the investigator that he was up-to-date on all of his federal taxes and that his current financial situation was good. In his answer to the SOR, Applicant stated: "I was not aware that these things existed on my credit report at the time of the original questionnaire."⁴ In his answer to interrogatories Applicant stated: "We have since the interview found out the debt belongs to old taxes/penalties not paid."⁵ No other explanation or information was provided.⁶

Applicant lived at the same residence from 2004 to the present. Prior to 2004, he lived at the same residence from 1997 to 2004. His former residence is on the same street as his present residence.⁷

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 used 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.

³ Item 4

⁴ *Id.*

⁵ Item 7.

⁶ Item 4, 6.

⁷ Item 5.

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, 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 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 conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19 and the following are potentially applicable:

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

Applicant has seven delinquent debts totaling approximately \$179,610. The debts date back to at least 2003 and they are not paid or resolved. I find there is sufficient evidence to raise these disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;
- (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 person 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 admits he owes all the SOR alleged debts. He paid the two debts in SOR ¶¶ 1.h and 1.i. The remaining debts are unpaid and unresolved. Applicant's federal tax debts date back to 2003. Applicant had an opportunity to provide documentation that he paid or made payments towards the delinquent debts, but failed to do so. He has not provided information that the financial problems were beyond his control. He has not provided evidence that he received financial counseling, has made good-faith payments, except as noted, or that the problem is being resolved. Although he apparently disputed one debt that he stated belonged to his former spouse, the evidence is to the contrary, and he indicated he was going to pay it. Applicant did not provide evidence as to why he failed to pay his federal taxes and incurred tax liens imposed since 2003. I find none of the mitigating conditions apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct.

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I have specifically considered

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant indicated to the OPM investigator that he was surprised he had federal tax liens. However, he was aware of a notice from the IRS several years ago about a large tax debt. He stated he believed his wife resolved it. Applicant's tax liens date back to 2003, and each one is for a substantial amount. He has lived at the same residence since 2004. He claimed in his interview that he was up-to-date on all of his federal taxes. The liens are for \$18,760, \$46,223, \$38,854, \$31,681, and \$40,170. It is common knowledge that the IRS sends many notices to taxpayers about discrepancies and delinquencies regarding their taxes. I have considered all of the statements made by Applicant to the OPM investigator. After considering the available evidence, I find Applicant's statements that he was unaware he had any tax debts are not credible. I find he intentionally failed to disclose his tax liens. Applicant chose to have his case determined on the record, so I have not had the opportunity to ask him questions. He had an opportunity to explain how he accumulated numerous tax liens, but he failed to provide additional information. I find the above disqualifying condition applies.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

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

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant did not make a prompt, good-faith effort to correct his omission before being confronted with the facts. The omissions are serious and not minor, and cast doubt on Applicant's reliability, trustworthiness, and good judgment. I have considered all of the evidence and conclude none of the 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.

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. I have incorporated my comments under Guidelines F and E, in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant is 52 years old. He owes approximately \$179,610 in delinquent federal taxes and other debts. He has not provided documentation he has paid or resolved these debts. In May 2010, he paid two small debts that had been in collection. He made assertions that certain debts were going to be paid by certain dates, but did not provide documents to support his assertions. He provided no explanation for how he accumulated over \$175,000 in federal tax liens and failed to pay them. 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 meet his burden of persuasion and mitigate the security concerns arising under the guidelines for Financial Considerations and Personal Conduct.

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.g:	Against Applicant
Subparagraphs 1.h-1.i:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge