



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



In the matter of:)	
)	
)	ISCR Case No. 09-07979
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: *Pro se*

August 31, 2011

Decision

CURRY, Marc E., Administrative Judge:

Applicant owes approximately \$50,000 in delinquent federal and state income taxes. Although he recently retained a tax consultant to help him implement a payment plan, this is insufficient to mitigate the security concern in light of the amount that is delinquent and the length of time the delinquencies have been outstanding. Clearance is denied.

Statement of the Case

On April 15, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant 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 adjudicative guidelines (AG) implemented by the Department of Defense on December 1, 2006.

Applicant answered the SOR on May 27, 2010, admitting the allegations and requesting a hearing. The case was assigned to me on June 18, 2011. DOHA issued a notice of hearing on July 7, 2011, scheduling the case for August 2, 2011. I held the hearing as scheduled.

At the hearing, I received six Government exhibits, admitted as Government Exhibits (GE) 1 through 6. Applicant testified and submitted one exhibit. (AE A). At the close of the hearing, I left the record open for Applicant to submit additional exhibits. Within the time allotted, he submitted one additional exhibit marked as AE B. DOHA received the transcript (Tr.) on August 9, 2011.

Findings of Fact

Applicant is a 47-year-old single man with two children, ages 19 and 12. His 19-year-old son lives with him. A prior marriage ended in divorce approximately 20 years ago. He pays child support for his 12-year-old daughter.

Applicant graduated from college in 1982 with a bachelor of science degree in computer science. (Tr. 25) Since then, he has been working in the information technology field. He was unemployed for approximately one month in 2008. (Tr. 27) For the past three years, Applicant has worked for a defense contractor. His duties include, among other things, maintaining the human resources computer system. (Tr. 24)

Applicant owes approximately \$50,000 of delinquent federal and state income taxes from tax years in the early 1990s to tax year 2009. In the 1990s, he filed his income tax returns, but did not pay the taxes due. From 2003 to 2009, he neither filed his income tax returns nor paid his income taxes. (Tr. 33)

Applicant's tax problems began in 1990 after taking a job as an independent contractor. His taxes were not deducted automatically from his pay, and he did not set any money aside in an escrow account for prospective taxes due. Consequently, he was unable to pay the tax bill when due. (Tr. 21)

Applicant made a payment arrangement with the U.S. Internal Revenue Service to pay his back federal income taxes at some time in the early 1990s. (Tr. 35) He adhered to the plan for approximately one year, but quit complying with it before he had finished paying the tax delinquency. Applied acknowledged that he had "no excuse" for not paying his income taxes. (Tr. 34)

In April 2011, Applicant retained a tax consultant to help him negotiate a payment plan for his delinquent taxes and file his delinquent tax returns. (AE B) Per the plan, Applicant, beginning in April 2011, paid the consultant a fee of \$6,350 in monthly increments to resolve his tax problems for tax years 2003 to 2009. Applicant completed paying the consultant fee on August 13, 2011, nearly two weeks after the hearing. (AE B at 12) Under the agreement, the consultant will now file the tax returns, begin negotiating offers in compromise, and develop a payment plan for Applicant. The

installment agreement only covers one of the outstanding tax liens listed in the SOR. (subparagraph 1.d - 2005 state tax lien for \$7,418—AE B at 13) The other tax liens remain unaddressed.

The SOR also alleges a cell phone debt for \$2,640 (subparagraph 1.e) and a debt to a bank for \$747 (subparagraph 1.f) Applicant disputes the cell phone bill, arguing that he didn't know "how that stuff got on" his bill. (Tr. 37) He provided no records of attempts to dispute or resolve the debt. (Tr. 37)

Subparagraph 1.f stems from a bounced check. (Tr. 38) He has not paid it.

Applicant maintains a budget. (GE 2) He has approximately \$1,800 of monthly after-expense income and \$5,000 saved in a 401k plan. (Tr. 48)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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."

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 for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, "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" (AG ¶ 18). Over the past 20 years, Applicant has accrued multiple delinquencies, including approximately \$50,000 of back taxes. At or about the time of the SOR's issuance, Applicant had not filed his federal or state income tax returns from tax years 2003 to

2009. AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” 19(c), “a history of not meeting financial obligations,” and 19(g) “failure to file Federal, state, or local income tax returns as required or fraudulent filing of the same,” apply.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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.

All of Applicant’s SOR delinquencies remain outstanding, and he may possibly owe back taxes for tax years 2006 to 2009. AG ¶ 20(a) is inapplicable.

Although Applicant was briefly unemployed, this has no bearing on the accrual of the majority of his delinquent debts because the unemployment was in 2008, nearly 18 years after he first failed to pay his income taxes. Moreover, he was only unemployed for one month. Most importantly, Applicant testified that he had no excuse for not either filing or paying his income taxes. AG ¶ 20(b) is inapplicable.

Applicant has retained a tax consultant to develop a payment plan for his income taxes. As of the hearing date, the plan was still being developed. Also, Applicant had initiated a payment plan in the 1990s, when he first experienced trouble paying his income taxes, and failed to adhere to it. Moreover, Applicant provided no plan to pay the bank debt listed in subparagraph 1.f. Under these circumstances, I cannot conclude that Applicant has his finances under control. I conclude Applicant’s retention of a tax advisor is sufficient for AG ¶ 20(d) to apply, but it is too soon to conclude that AG ¶¶ 20(c) applies.

AG ¶ 20(e) is potentially applicable to the cell phone debt Applicant disputes. He neither provided evidence that he informed the cell phone company of the dispute nor provided evidence substantiating the basis of the dispute. AG ¶ 20(e) is not applicable.

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.

Applicant has either not filed his income tax returns and/or not paid his income taxes nearly every year for the past 20 years. No circumstances beyond his control contributed to this problem. It was solely caused by his irresponsibility.

Applicant retained a tax consultant, but thus far, has neither developed a payment plan, nor started making any payments toward the satisfaction of these debts. I am not persuaded that he will adhere to this plan once implemented, in light of his failure to adhere to a similar plan approximately 15 years ago. Upon considering this case in the context of the whole-person concept, I conclude Applicant failed to mitigate the security concern.

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.f:	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.

MARC E. CURRY
Administrative Judge