



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



In the matter of)
)
) ISCR Case No. 09-08083
)
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel

For Applicant: *Pro se*

April 13, 2011

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings and exhibits, I conclude that Applicant has not mitigated the security concerns raised under the guideline for financial considerations. Accordingly, his request for a security clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) signed on July 29, 2009, to request a security clearance required as part of his employment with a defense contractor. 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 finding that it is clearly consistent with the national interest to grant Applicant's request.¹ (Item 5)

On September 14, 2010, DOHA issued Applicant a Statement of Reasons (SOR) (Items 1, 2) that specified the basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations) of the Adjudicative Guidelines (AG). Applicant received the SOR on September 23, 2010. (Item 3) He responded on October 26, 2010. (Item 4) He requested a decision without a hearing.

In his Answer to the SOR, Applicant admitted the ten allegations under Guideline F. Department Counsel forwarded to Applicant a file of relevant materials (FORM)² dated November 23, 2010, in support of the Government's preliminary decision to deny Applicant's request for a security clearance. Applicant received the file on December 16, 2010. He was given 30 days from the date he received the FORM to file a response. He timely submitted a reply dated January 14, 2011 (Reply). The case was assigned to me on February 1, 2011, for an administrative decision based on the record.

Findings of Fact

Applicant's admissions in response to the SOR are admitted as fact. After a thorough review of the pleadings, Applicant's response to the SOR and FORM, and the evidence presented by both parties, I make the following additional findings of fact.

Applicant, who is 60 years old, married in 1978, and has two children, 29 and 32 years of age. He attended a community college from 1999 to 2001, but did not receive a degree. He served in the U.S. Air Force from 1970 until he was honorably discharged in 1990. He held a security clearance during his military service. Among other awards, he received the meritorious service medal, commendation medal, achievement medal, humanitarian service medal, and national defense service medal. His commander noted, upon Applicant's retirement, that Applicant "set very high standards of excellence." (Items 4, 5)

After Applicant retired from the military in 1990, he was unable to find employment at the rate he had been earning. He moved to another state where his wife was taking care of her ill mother. He held a part-time job from 1991 to 1998, and a full-time job from 1996 to 1998. In 1998, he began employment with a defense contracting company as a Combat Readiness Coordinator/Instructor. In December 2010, he was offered a position as a Material Coordinator, to begin

¹ See Executive Order 10865, as amended, and DoD Directive 5220.6 (Directive), as amended.

² See Directive, Enclosure 3, Section E3.1.7. The FORM included eight documents (Items 1 - 8) proffered in support of the Government's case.

January 1, 2011. He was commended for his "hard work and dedication" on the job in 2000 and 2001. His wife worked in a state government position from 1993 to 2005, was unemployed for one year, and took a federal government position in 2006. Applicant's son is autistic and lives at home, where Applicant supports him. Applicant helped his mother and grandmother financially starting in about 1990, until their deaths in 2009 and 2010. His daughter started college in 1997, and he has been helping with her school expenses. (Items 4, 6; Reply, pages 1, 13)

Applicant's financial problems began when he claimed too many exemptions on his federal and state tax returns after leaving the Air Force in 1990. As a result, he was liable for large tax bills for tax years 1990 through 1996. He also owed additional taxes in 2006, when his wife withdrew \$40,000 from her 401k; and in 2007, when he withdrew \$1,200 from his 401k. He did not know he was required to include these amounts on his income tax returns. Interest and penalties over the years have increased the balances he owes. His state and federal debts have been paid primarily through the Government's seizures of his refunds. In March 2010, he increased his withholding by \$85 per month. In August 2010, the IRS informed him that he was subject to backup withholding, and that 28 percent of all dividends and interest would be withheld as of August 31, 2010. (Items 4, 6; Reply, page 10)

As of April 2010, Applicant's net monthly pay was \$4,729. His monthly expenses and debt payments total \$4,142, leaving a monthly net remainder of \$588. This amount does not include his wife's income. In 2003, Applicant sought assistance from a debt consolidation service. He made payments for four months before deciding that the operation was fraudulent, and he discontinued the service. In 2007, Applicant took a vacation in the Bahamas. (Item 6)

The status of the SOR debts follows.

- **Judgment, \$2,659 (allegation 1.a) – PAID.** The debt relates to two bank loans Applicant opened in the mid-2000s. He did not make payments for several years. In 2008, the creditor filed suit against Applicant for the unpaid balance. Applicant stated in his 2010 Answer that he was not notified of the judgment. However, during his 2009 security interview, Applicant informed the agent that the creditor had sued him. He started a payment plan for \$125 per month to be automatically deducted from his bank account. He submitted documentation showing the debt was paid in full in May 2010. (Items 4, 6, 7, 8; Reply, page 6)
- **State tax liens: (allegation 1.f, \$1,603; allegation 1.h, \$1,670) totaling \$3,273 – PAID.** Applicant owed back taxes to the state for several tax years. The state tax liens began in tax year 1990, and total about \$6,000. He paid these deficiencies primarily through seizure of his refunds each

year.³ The August 2009 and March 2010 credit bureau reports (Items 6, 8) show the lien for \$1,603 (allegation 1.f) was released in 2007, and the lien in the amount of \$1,670 (allegation 1.h) was released in 2003.⁴

- **IRS tax liens: \$51,612 (allegations 1.b, 1.c, 1.d, 1.e, 1.g, 1.i) – PAYMENT PLAN pending.** Applicant has had payment plans in effect at various times with the IRS. He paid \$200 per month via allotment from 1991 to 1996. From 2008 to 2009, he paid \$385 to \$500 per month. He ended the payments in April 2009 so that he could make payments on a car. At the time of his September 2009 security interview, he planned to contact the IRS to set up a new payment plan. He stated that in 2007, the IRS informed him he owed \$17,000 for tax years 1995 through 1999 and 2002 through 2003. However, in his interrogatory response, he listed five tax liens that totaled \$50,977. He contends that the \$16,501 amount listed at allegation 1.i for tax year 1996 is actually the total amount owed for all tax years prior to 1996. He stated he was attempting to obtain a final full balance from the IRS. In the fall of 2010, he began a payment plan of \$1,530 per month. He missed a payment, then made a payment of \$800 in October 2010. In his January 2011 Reply, he stated he is working with the IRS on a revised installment amount because he had additional expenses for a car. He expected the new payment to be approximately \$800 per month. (Items 4, 6; Reply)
- **Collection debt totaling \$2,302 (allegation 1.j) – PAYMENT PLAN.** This debt has been delinquent since 2007. Applicant contacted the creditor in May 2010 and set up a payment plan for \$200 per month starting October 2010. In his January 2011 Reply, he estimated the debt would be paid in eight months (August 2011). He provided proof of a reduced balance of \$1,902, with a hand-written note that the balance is \$1,702. (Items 4, 8, Reply, page 12)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.⁵ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole-person” concept.

³ Applicant mistakenly forwarded documentation showing payment of two state tax liens, but not the two listed in the SOR. (Item 6)

⁴ The credit bureau reports list numerous state tax liens other than the two in the SOR, some of which were satisfied and some not. These other liens are not alleged and I will not consider them except in evaluating the Whole-Person factors. (Items 7, 8)

⁵ Directive 6.3

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when 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 Guideline F (Financial Considerations) at AG ¶ 18.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁶ 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.⁷ A person who has access to classified information enters 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 judgment, reliability and trustworthiness to 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.⁸

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern about financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage.

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The evidence supports application of disqualifying conditions AG ¶19 (a) (*inability or unwillingness to satisfy debts*) and AG ¶19 (c) (*a history of not meeting financial obligations*). The SOR alleges that Applicant owes more than \$50,000. Applicant has paid three debts, which reduces the SOR debt by \$4,932. Both Applicant's federal and state tax debts have been accruing since 1990. Applicant's history demonstrates a failure to meet his financial obligations.

Under AG ¶ 20, the following potentially mitigating factors are relevant:

(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; and

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

Applicant's debts have been accruing since 1990, more than 20 years. But they are not in the distant past, as most of the federal tax debt remains unpaid. His inconsistent efforts in relation to these debts indicate that delinquencies may continue or recur in the future, and raise questions as to his reliability and judgment. AG ¶ 20(a) does not apply.

AG ¶ 20(b) focuses on situations where conditions beyond an applicant's control affect his ability to meet his financial obligations. Applicant notes that he went through a long period of low-paid and temporary employment after he retired from the Air Force in 1990, lasting until he gained full-time employment in 1998. This circumstance can be considered an event beyond Applicant's control. However, he has been steadily employed since 1998. Applicant's low-paid work occurred 13 years ago, and he has been steadily employed since then. He has had sufficient time to have made a sustained effort to pay the IRS. Moreover, Applicant chose to take funds from his own and his wife's 401k accounts in 2006

and 2007 that resulted in an increased tax liability; he chose to vacation in the Bahamas in 2007 while he owed significant amounts to the Government; and he chose to stop his IRS payments in 2009 to pay on his car loan instead. Mitigation is not available under AG ¶ 20(b).

AG ¶ 20(d) requires a good-faith effort to resolve debts. Applicant paid the two state tax liens several years ago, but most of his tax liens have been paid through seizure of his refunds rather than through his own efforts. Although he paid the collection account listed at allegation 1.a, he admitted that he failed to make payments for several years, and the creditor finally filed a judgment against him. He has a payment plan in place for the debt at 1.j, and has reduced the balance by \$600. However, he started that payment plan in 2010, on a debt that has been delinquent since 2007. By far the largest debt is owed to the federal government. Applicant has made intermittent efforts to pay the federal tax liens. However, the back taxes have been due since 1990, and after more than 20 years, he is still trying to work out a plan to pay them. As of the date of his Reply in January 2011, his payment amount was uncertain, as he had asked the IRS to reduce it by half. Only partial mitigation is available under AG ¶ 20(d).

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the relevant circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guideline. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole person concept. Under the appropriate guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant has demonstrated character dealing with issues in his personal life including a child with special needs, and a mother and grandmother who

needed financial assistance in their last years. He served his country honorably for 20 years in the Air Force. He has received numerous military medals and his supervisors laud his hard work and dedication.

However, other record evidence raises security concerns. Applicant is a mature adult with years of experience in the work world, and presumably, an understanding of the way in which the federal and state tax systems operate. Yet despite having income from steady employment for the past 13 years, he failed to consistently meet those obligations over two decades. It is difficult to understand how he could have made the same mistake in under-withholding year after year. His lack of diligence about his obligations to the state and federal governments is a serious concern. He had numerous state tax liens that were paid not through his own efforts, but primarily through seizure of his refunds. He owes a large debt to the federal government, and has let his unpaid taxes mount and accrue interest charges and penalties. He has been in contact with the IRS over the years, and admits that the personnel there have been willing to work with him. Yet, after 20 years, he is still working out a payment plan for the bulk of the federal taxes. Applicant's recent efforts are likely a response to the security process. His sporadic efforts in relation to the IRS debt do not demonstrate reliability and good judgment.

A fair and commonsense assessment of the available information shows that Applicant has not satisfied the doubts raised about his suitability for a security clearance. For these reasons, I conclude Applicant has not mitigated the security concerns arising from the cited adjudicative guideline.

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 as follows:

Paragraph 1, Guideline F:	AGAINST Applicant
Subparagraph 1.a – 1.j:	Against Applicant

Conclusion

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

RITA C. O'BRIEN
Administrative Judge