



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



In the matter of:)
)
) ISCR Case No. 10-01760
)
)
Applicant for Security Clearance)

Appearances

For Government: Gina Marine, Esquire, Department Counsel
For Applicant: *Pro se*

December 22, 2010

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

On September 30, 2009, Applicant submitted An Electronic Questionnaire for Investigations Processing (e-QIP) to update his security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued two Interrogatories to Applicant to clarify or augment potentially disqualifying information in his background. After reviewing the results of the background investigation and Applicant's responses to the Interrogatories, DOHA could not make the preliminary affirmative finding required to issue a security clearance. DOHA issued a Statement of Reasons (SOR), dated August 11, 2010, to Applicant detailing security concerns for financial considerations under Guideline F. These actions were 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 on September 1, 2006. Applicant acknowledged receipt of the SOR on August 13, 2010.

Applicant answered the SOR on August 25, 2010. He admitted SOR 1.a alleging that he did not file federal tax returns for tax years 2003 through 2006. He denied SOR 1.b, 1.c, and 1.d alleging that he owed federal taxes. He stated that all federal taxes had been paid. He denied SOR 1.e, 1.f, 1.g, and 1.h alleging unpaid state taxes to the state where he previously resided and worked. He stated that he had an agreement to pay the past-due state taxes. Department Counsel was prepared to proceed on September 22, 2010, and the case was assigned to me on September 23, 2010. DOHA issued a Notice of Hearing on October 15, 2010, scheduling a hearing for November 2, 2010. I convened the hearing as scheduled. The Government offered three exhibits marked and admitted without objection as Government Exhibits (Gov. Ex.) 1 through 3. Applicant and three witnesses testified on his behalf. Applicant offered one exhibit marked and admitted without objection as Applicant Exhibit (App. Ex.) A. I left the record open for Applicant to submit additional documents. Applicant timely submitted three documents marked and received as App. Ex. B through D. Department Counsel had no objection to the admission of the documents. (Gov. Ex. 4, Memorandum, dated December 1, 2010) DOHA received the transcript of the hearing (Tr.) on November 9, 2010.

Findings of Fact

Applicant admitted one factual allegation in the SOR. I included Applicant's admission in my findings of fact. After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 63 years old and has been employed by defense contractor for over two years. He has over 20 years combined service in the Air Force and the Army. He retired in 1990 from the Air Force as a master sergeant (E-7). He has held a security clearance since entering the Army in 1968. He is divorced and has one grown son. His monthly net pay is \$3,400, and he receives \$1,457 monthly in retired pay for a total monthly income of \$4,857. His monthly expenses, including payments on delinquent state taxes, are approximately \$4,300, leaving over \$500 in monthly discretionary funds. (Tr. 42-49; Gov. Ex. 1, e-QIP, dated September 30, 2010; Gov. Ex. 2, Response to Interrogatories, dated June 6, 2010, at 5, Personal Financial Statement)

Applicant admits that he did not file his federal or state tax returns for tax years 2003 through 2006. Applicant's son was arrested, tried, and convicted in 2004 for a felonious assault. He was sentenced to four years in prison but was placed on parole. His son was married and had one child. Applicant's son did not have the funds to pay for a lawyer to represent him, so Applicant paid for his son's lawyer. Since his son had a felony conviction, he could not find meaningful employment, so Applicant provided financial support to his son and his family. Applicant admits he did not file or pay his taxes for the four tax years so we could have the funds to help his son. Applicant felt his family came first rather than his tax liability. He still provides his son and his family with

approximately \$8,000 a year in support. At the time he did not file his tax returns, Applicant was employed with a defense contractor located in State A. He was laid off when the contract he was working under finished in January 2008. He was hired by his present defense contractor employer in State B in August 2008. (Tr. 14-23, 36-38; Gov. Ex. 2, Response to Interrogatories, dated June 6, 2010)

In early 2008, the Internal Revenue Service (IRS) filed substitute tax returns for Applicant for the four tax years he did not file, and determined a tax liability for him. He was not able to pay his past-due taxes until he was hired by the defense contractor in August 2008. At that time, he hired a tax relief group to assist him in negotiating with the IRS for payment of his federal taxes. He started making monthly payments of \$425 in August 2008. The IRS also garnished his wages. Based on the payments he made, the garnishments from his pay, and refunds due for later years, Applicant's federal tax liability was paid in full by July 12, 2010. (Tr. 23-36, 48-53, 60-62; App. Ex. B, Letter, dated November 18, 2010)

The tax relief group Applicant hired to assist in paying his federal taxes did not work on state taxes. He hired a second tax relief group to assist him with taxes owed the state where he previously lived and worked. The tax relief group negotiated with State A for a payment plan for taxes owed from tax years 2004 to 2008. The total tax liability to this state is approximately \$18,000. An agreement was reached for Applicant to pay \$998 monthly on his state taxes starting in July 2010. (Tr. 55-58, 62-64; App. Ex. A, Agreement, dated July 8, 2010) Applicant has made four payments totaling almost \$4,000. (App. Ex. C, Cancelled checks, various dates)

Applicant also had the tax relief group assist him in the payment of state taxes owed the state where he presently lives and works. The taxes owed this state since he started working in the state in August 2008 was \$8,800. Taxes had been collected from his pay but he still had over \$7,700 in tax liability. The taxes were paid in full by June 18, 2010. (Tr. 53-54; App. Ex. D, Cashier's check, dated June 18, 2010)

Applicant's immediate supervisor testified that he hired Applicant for one of his company's positions. Applicant is very knowledgeable about his job. His work product is excellent, he has good rapport with government engineers, and he has saved the government almost a million dollars since his arrival. He knows of Applicant's tax issues, and recommends Applicant be granted access to classified information. (Tr. 67-76)

A senior engineer for Applicant's employer testified that he is Applicant's technical supervisor. He served on active duty in the United States Army and in the National Guard. He has known Applicant for over two years, and recently became aware of his tax problems. He does not consider Applicant a security risk and trusts him with classified information. (Tr. 76-82)

The government employee, who is the first-line government contract supervisor over Applicant's company, testified that he has been a government employee for over ten years and was a government contractor prior to his government employment. He is

aware of Applicant's work on the contract, and he considers Applicant to be a valued member of the team. He recently became aware of Applicant's tax problems. He questioned Applicant and learned that Applicant was working to resolve the tax issues before it became a problem for his security clearance. He recommends Applicant be granted access to classified information. (Tr. 82-89)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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.

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.

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 to obtain 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 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.

Analysis

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 overextended is at risk of having to engage in illegal acts to generate funds. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. Applicant admitted that he deliberately did not file or pay his federal and state taxes for four years so he could use the funds to support his family. Applicant's admission of a delinquent tax debt is a security concern raising Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts); FC DC AG ¶ 19(c) (a history of not meeting financial obligations); and FC DC AG ¶ 19(g) (failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same). His finances show unwillingness and not inability to satisfy debt.

I considered Financial Considerations Mitigating Condition (FC MC) 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) and FC MC AG ¶ 20(b) (the conditions that resulted in the financial problems 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). These mitigating conditions do not apply. Applicant incurred delinquent tax debts when he purposely decided not to file his federal and state taxes for four years. He had a family issue and decided he needed to support his family rather than pay the taxes. The circumstances that caused him not to file and pay his taxes were not unusual, not beyond his control, and could recur. However, it is noted that since 2008, Applicant has acted responsibly by taking the necessary action to pay his past-due taxes. He has paid his federal taxes, has a payment plan to pay the taxes for the state where he previously lived, and is current on his taxes for the state where he presently lives.

I considered FC MC ¶ 20(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). This mitigating condition applies. While Applicant did not affirmatively testify that he received financial counseling, he has used two tax relief groups to assist him in paying his taxes and he has an attorney assisting him with his tax problems. His tax-related financial problems are resolved and under control.

I considered FC MC AG ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC AG ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic method of handling debts is needed. Applicant must establish a "meaningful track record" of debt payment. A "meaningful track record" of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. An applicant is not required to establish that he paid each and every debt listed. All that is required is that Applicant demonstrates an established plan to resolve his financial problems and show he has taken significant actions to implement that plan. Applicant decided not to file his federal and state taxes from 2003 until 2006 so he could use the funds to support his son who was undergoing a criminal conviction. When Applicant became fully employed in August 2008, he contacted tax relief groups to assist him in resolving his tax debts. He paid his past-due federal taxes. He has a payment plan to pay the past-due taxes owed to the state where he previously lived and worked. He established that he made four payments under this plan and he is current with the plan payments. He paid in full and is current with the state taxes owed the state where he now lives and works. Applicant has sufficient funds to pay the financial obligations under his payment plan. Applicant's actions in paying and resolving his delinquent tax debts provides significant and credible information to establish a meaningful track record of debt payment and a good-faith effort to repay his creditors or resolve debt. His actions show he is now acting reasonably and responsibly to resolve his financial problems. His tax liability does not now reflect adversely on his trustworthiness, honesty, and good judgment.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 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 considered that Applicant is considered a good employee and that both his government and company supervisors recommend he be granted access to classified information. I considered that Applicant has successfully held a security clearance for over 40 years. I considered Applicant's financial problems arose from a desire to assist his son and the son's family financially when the son had a criminal problem. Applicant's decision to not file or pay federal and state taxes so he had the funds to assist his son was misguided and wrong. Even though his decision was wrong, he took the necessary steps to resolve the problems when he had a steady income and before receiving the SOR. Applicant established a "meaningful track record" of payment of his past-due taxes by paying in full his federal and paying under a payment plan the taxes owed another state. He is current with the state taxes owed to the state where he now resides. Applicant presented sufficient information to show he has now taken the necessary reasonable and responsible actions to resolve his tax liability. Applicant's actions to pay his past tax obligations indicate he will be concerned, responsible, and careful regarding classified information. Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated security concerns arising from financial considerations and should be granted access to classified information.

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:	FOR APPLICANT
Subparagraphs 1.a - 1.h:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge