



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



In the matter of:)	
)	
)	ISCR Case No. 10-04590
)	
Applicant for Security Clearance)	

Appearances

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

May 19, 2011

Decision

HEINY, Claude R., Administrative Judge:

Applicant failed to file his 2004 through 2009 federal income tax returns as required. In 2007, he had a \$38,000 federal tax lien entered against him, which has yet to be satisfied. He has failed to rebut or mitigate the security concerns under financial considerations. Clearance is denied.

Statement of the Case

Applicant contests the Defense Department’s (DoD) intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on November 19, 2011, detailing security concerns under Guideline F, financial considerations.

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), 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 September 1, 2006.

In an undated response received on January 5, 2011, Applicant answered the SOR and elected to have the matter decided without a hearing. Department Counsel submitted the Government's case in a File of Relevant Material (FORM), dated March 2, 2011. The FORM contained 12 attachments (Items). On March 22, 2011, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. A response to the FORM is due 30 days after receipt of the FORM. Applicant's response was due on March 21, 2011. As of May 11, 2011, no response had been received. On May 12, 2011, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, he admitted all of the factual allegations in the SOR, and his admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 53-year-old aircraft electrical mechanic who has worked for a defense contractor since September 1997, and seeks to maintain a confidential security clearance.

Applicant asserts his financial problems started in 1995, when he went through a divorce, which was finalized in 1996. In 1995 and 1996, he was unemployed, living with his girlfriend. In 1997, he started working for his current employer. After obtaining his current job, he delayed filing his tax returns. In 2003, the Internal Revenue Service (IRS) garnished his wages in the amount of \$25,095 for tax years 1995 through 2002. (Item 6) The \$25,095 federal tax lien entered in December 2003 was released in December 2003. (Item 8) He asserts that in 2004 he filed his tax returns for years 1995 through 2003. (Ex. 6) In March 2007, a \$38,754 federal tax lien was entered against him. (Item 8)

Applicant had two state tax liens entered against him: in November 2005, a \$4,508 state tax lien (SOR 1.j), and, in September 1996, a \$2,587 state tax lien (SOR 1.i). (Item 6, 8) In October 2010, he stated he did not believe the amounts listed as owing on these liens were correct. He stated he had no plan to resolve these liens and his priority is addressing his federal tax debt. (Item 7)

In April 2004, Applicant filed for Chapter 7 bankruptcy protection. His net monthly income was \$2,550. (Item 9) His previous year's annual income was \$42,164 and \$48,321 the year before that. (Item 9) In his bankruptcy, he listed \$84,565 in assets and \$105,677 in liabilities. Secured claims represented approximately \$79,000 of the liabilities and unsecured debt represented approximately \$26,000. (Item 9) His \$18,149 federal income tax debt was listed as an unsecured claim. (Item 9) The state tax liens were not listed in his bankruptcy. Pursuant to the bankruptcy, he surrendered his 2002 Dodge Neon. His unsecured debts were discharged in September 2004. He reaffirmed three debts from the bankruptcy: \$40,000 (mortgage account), \$20,800 (credit union account), and \$10,800 (credit union account for a 2001 pickup truck).

In March 2010, Applicant's financial problems were discussed during a personal subject interview. As of that date, the IRS had an \$80 weekly garnishment of his wages. His net monthly income was \$2,720 and his wife's monthly net income was \$800. Their combined monthly discretionary income (net income less expenses and debt payments) was \$300. (Item 6) In October 2010, he submitted an undated weekly pay statement that listed a \$184.62 wage attachment. (Item 7)

On February 18, 2011, Applicant completed an Electronic Questionnaires for Investigations Processing. (Item 5) In response to section 26, Financial Record, he indicated: 26.b, he had property repossessed; 26.d, he had a lien placed against him for failing to pay taxes or other debts; 26.e, he had a judgment entered against him; 26.g, he had bills turned over to a collection agency; 26.k, he had had wages garnished; 26.m, he had been more than 180 days delinquent on debts; and 26.n, was currently more than 90 days delinquent on debts. He also listed the three accounts he reaffirmed following his bankruptcy and a \$3,000 county garnishment (SOR 1.n). He also listed a \$125 collection account (SOR 1.k) and disputed a \$150 account (SOR 1.m). In his October 2010 response to interrogatories (Item 7), he indicated he had made payments on the last two debts, but provided no supporting documentation.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 interests of 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 of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 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

AG ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding 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 as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems. He has no plan to resolve the state tax liens entered against him in 1995 and 1996. He failed to file his federal income tax

returns in a timely manner. He did not file his 1995 to 2002 federal returns until 2004. He admitted failing to file his 2004 through 2009 federal returns as required. He provided no documentation he has filed these returns. His wages are being attached in the amount of \$185 weekly. He did not explain where the garnished wages were going. He had a federal tax lien and a county tax assessment entered against him. Three small collection accounts have yet to be paid. AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations 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.

Applicant's financial problems have continued for several years and there is no reason to believe they will not continue. He should have been more diligent and made greater efforts to resolve his delinquent debts. He has failed to carry his burden of proving his financial responsibility. Applicant's financial problems started in 1995, when he was unemployed. His 2004 bankruptcy gave him a fresh start. Following his bankruptcy, he failed to file his 2004 to 2009 federal taxes as required.² In 2007, a \$38,753 federal tax lien was filed against him. His wages are being attached to address the federal tax delinquency and to address a \$3,000 state tax debt. Applicant has provided no documentation that the three minor collection accounts have been paid.

² Applicant's debts were discharged in September 2004. His 2004 federal income taxes would not have been due until April 2005, which was after the discharge date. Additionally, bankruptcy procedures allow discharge of federal income tax liability under limited circumstances, which has not been documented in this case.

Applicant meets none of the mitigating factors listed under financial considerations. Applicant's delinquent debts are numerous, ongoing, and remain unpaid. His continuing delinquent debts constitute a "continuing course of conduct." ISCR Case No. 087-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). There is no evidence he has filed his 2004 to 2009 federal income tax returns. Since he has failed to file his federal income tax returns in a timely manner, I cannot find his financial problems are unlikely to recur. Failing to file taxes casts doubt on the individual's current reliability, trustworthiness, or good judgment. The mitigating condition listed in AG ¶ 20(a) does not apply.

Applicant asserted his 1996 divorce contributed to his financial problems, but provided no documentation showing how that 14-year-old divorce affects his present-day ability to repay his delinquent accounts. However, he has been employed by his current employer since 1997. He has failed to establish his financial problem were largely beyond his control and has failed to show he has acted responsibly under the circumstances. The tax liens were caused by his failure to file his returns. He provided no explanation for failing to timely file his taxes. The mitigating condition listed in AG ¶ 20(b) does not apply. Applicant has not had financial counseling, nor are there clear indications the problem is being resolved or is under control. The mitigating condition listed in AG ¶ 20(c) does not apply.

Applicant's wages are being attached at the rate of \$185 weekly. His pay statement does not indicate how much was applied to address his federal or his state tax liens, but he stated he had \$83 garnished weekly for his federal debt. I do not find the attachment to be a good-faith effort to repay his taxes. The mitigating condition listed in AG ¶ 20(d) does not apply.

On his e-QIP, Applicant stated he was disputing a \$150 collection account, but admitted this debt in his SOR answer. The mitigating condition listed in AG ¶ 20(e) does not apply because the debt has been admitted, and he failed to provide documented proof to substantiate any basis for disputing the debt.

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 relevant 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. In March 2007, a \$38,753 federal tax lien was entered against him by the IRS. This tax lien would have addressed his delinquent tax liability only for tax years 2005 and earlier. There is no evidence Applicant has filed his 2004 through 2009 federal tax returns, and what tax obligations might arise from those tax years.

The issue is not simply whether all of Applicant's debts have been paid – they have not – it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) Applicant's federal tax obligation is large, but he also has three small collection accounts, which total \$430, that remain unpaid. His inability to address even these smaller delinquencies raises a concern about his fitness to hold a security clearance.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. He has not mitigated the security concerns arising from his financial considerations.

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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a – 1.n: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge